
Appeal Decision

Site visit made on 30 May 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 4th July 2017

Appeal Ref: APP/N5660/W/16/3165852

64 Offley Road, London SW9 0LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr A Howell of Buxworth Homes against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 16/05777/VOC, dated 7 October 2016, was refused by notice dated 6 December 2016.
 - The application sought planning permission for erection of a 4 storey building with roof terrace and lower basement level, to provide an office (Use Class B1) financial and professional/business use and 4no. residential flats (use Class C3), following the demolition of existing building without complying with a condition attached to planning permission Ref 15/02355/FUL, dated 13 November 2015.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the approved plans listed in this notice.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the appellant's name from the planning application form, although I note that a Christian name has been provided on the appeal form.

Background and Main Issue

3. The original planning permission was for the erection a four storey building comprising an office and four residential flats following the demolition of the existing building. I observed that demolition of the existing building has taken place. Condition 2 requires the development to be carried out in accordance with the approved plans. The approved scheme incorporates four two-bedroom flats. This variation seeks to reconfigure the third and fourth floor into a single unit to alternatively create three two-bedroom flats and one three-bedroom flat. The proposed reconfiguration of the layout of the flats would remove the communal amenity space previously provided within a roof conservatory in the original scheme.
 4. The main issue is whether Condition 2 is reasonable and necessary with regard to the provision of communal amenity space and the effect that varying this
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condition to remove this space would have on the living conditions of future residential occupiers.

Reasons

5. Policy H5(b) of the Lambeth Local Plan 2015 (the Local Plan) requires new flats to provide at least 50m² communal amenity space per scheme plus an further 10 m² consolidated within the communal amenity space where each flat would not have a balcony, terrace or private garden. Paragraph 5.26 of the explanation to Local Plan Policy H5 indicates that the Council expect all development to provide amenity space in accordance with this policy and encourages the use of roof areas for additional amenity or garden space.
6. The Council indicate that the communal and private spaces provided within the original scheme were broadly in keeping with policy requirements. Although the ground and top floor flats would have access to outdoor living space, the new scheme, without a communal roof terrace would mean that two flats would not have access to any external amenity space and none of the flats would have access to a communal amenity space.
7. The Local Plan sets the appropriate thresholds to which new development should adhere. The minimum communal amenity space standard is set to ensure that a good standard of living environment is achieved, particularly where a flat or flats would not have access to any external amenity space. The proposal would fall significantly short of the requirement set out within Policy H5 and would not provide any communal amenity space for the occupiers of the flats. In my judgement, these standards set out an appropriate minimum amenity space standards for this type of flat development and its living accommodation. I consider the shortfall in this instance would result in a poor standard of living environment for the future occupiers of all four flats and primarily the two of the flats that would not offer future occupiers any outdoor living space.
8. The appellant indicates that each approved flat would exceed the Local Plan flat size requirements by 10%. Notwithstanding this, the communal amenity space as approved within the original scheme would offer the future occupiers a relatively private amenity space in which they can relax and enjoy as an alternative to their main living environment. Despite there being a wide range of shops, social and community facilities in the area, as well as Kennington Park to the north of the appeal site, I consider future occupiers would more likely use the communal space on a day-to-day basis as it would offer a greater sense of privacy and homeliness to that of the nearby park.
9. The appellant contests that the communal space conservatory roof within the approved scheme would create a constrained internal space due to its roof slope. However, this design arrangement has been accepted by the Council and, in any event, the roof conservatory would provide communal space which is not provided within the proposed amended scheme. The appellant also refers me to an earlier Section 73 permission that he advises has granted changes to the layout and removed the conservatory feature on the roof and a second floor door restricting access to the upper floor. However, no details of that scheme are before me. Nonetheless, this proposal relates to a different scheme and it would be open to the appellant to implement that earlier Section 73 planning permission. This proposal can and should be considered on its own merits in light of the information that is before me.

10. The appellant in his Statement of Case notes that there has been no change to the Borough's policy context although points out that the thrust of policy seeks to deliver housing, particularly family homes. The proposal would deliver one larger family sized flat as part of the scheme. The proposal would also optimise the site and provide quality accommodation that would accord with the London Plan standards. I acknowledge that the proposed development would not change the proposed use of the building or create any new planning unit. However, these benefits do not, in my opinion, outweigh the harm to the future occupiers, particularly those of two of the proposed flats that would not have access to any communal amenity space.
11. In reaching my decision I have had regard to the tests set out in paragraph 206 of the National Planning Policy Framework (the Framework) and the Newbury tests¹ relating to the lawfulness of conditions. I have also had regard to paragraph 203 of the Framework and the advice set out in Planning Policy Guidance which relates to the use of conditions to make an otherwise unacceptable development acceptable. The appellant, in his Statement of Case, does not contest the imposition of the condition restricting the original development to be carried out in accordance with specific drawings listed as he acknowledges that this provides certainty as to what is to be built.
12. The appellant refers in his statement to comments made by the Council's Policy Officer but the Council has not referred to these in its Delegated Offers Report and neither party has provided these. As these comments have not been provided I therefore cannot take them into account in reaching my decision.
13. I conclude that the condition is reasonable and necessary to retain the provision of communal amenity space in the interests of the living conditions of future occupiers. The proposed development would be contrary to Policy H5 of Lambeth Local Plan 2015 which seeks all new flat development to achieve minimum communal amenity space, amongst other matters.

Conclusion

14. For the reasons given above, I conclude that the appeal should be dismissed.

Nicola Davies

INSPECTOR

¹ Newbury District Council v Secretary of State for the Environment 1981 A.C. 578