



Appeal Decision

Site visit made on 11 July 2019

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2019

Appeal Ref: APP/H5960/W/19/3227372

1 Chartfield Square, London SW15 6DR

- 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 Ms Hermione Love against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2018/4031, dated 19 August 2018, was refused by notice dated 30 October 2018.
 - The development proposed is the erection of two-storey (ground and basement levels) house fronting Chartfield Square.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two-storey (ground and basement levels) house fronting Chartfield Square at 1 Chartfield Square, London SW15 6DR in accordance with the terms of the application, Ref 2018/4031, dated 19 August 2018, subject to the conditions set out in the attached schedule.

Main Issue

2. The main issue is whether the loss of garden land is justified having regard to the development plan.

Reasons

3. The appeal site comprises an area of garden to the side of No 1 Chartfield Square which is an end of terrace property. Unlike the other properties in the row No 1 has a side garden at ground floor level which extends to Chartfield Avenue. The garden is enclosed by fencing but includes trees adjacent to the boundary which are subject to a Tree Preservation Order (TPO). These trees contribute to the verdant character of the area derived from the trees along the street.
4. Wandsworth Local Plan Development Management Policies Document (DMPD) policy DMH4 restricts development of residential gardens. The approach is consistent with National Planning Policy Framework (the Framework) paragraph 70 and Policy 3.5 of the London Plan 2016 which provides that Councils may introduce a presumption against garden development where this can be locally justified.
5. The Council in their appeal statement explain that the policy was formulated in response to concerns over cumulative effects of infill and backland development, and that garden land is a finite resource.

6. The Wandsworth Local Plan Supplementary Planning Document Housing 2016 (SPDH) further explains that no local justification can be made for the development of residential gardens in the Borough and that the Council's housing targets can be met without relying on garden land. Whilst the appellant suggests that the housing targets will not be met, and that the target is to be increased together with a requirement for small sites under the draft London Plan, other than referring to the Council's reliance on large schemes no detailed evidence or calculations of the supply position have been provided. Notwithstanding this, there is no upper limit to supply and the new residential property would contribute to the Borough's housing stock.
7. The explanatory text to policy DMH4 explains that open spaces between buildings are an integral part of the character and appearance of much of the Borough, and that development on back gardens can have a negative impact on other policy objectives. It further indicates that the development of back gardens is therefore generally regarded as an inappropriate form of development in the Borough. Consequently, whilst the wording of the policy appears to apply a blanket objection to development on garden land, I agree with the appellant that the explanatory text which uses the word "generally" that a degree of judgement is required, having regard to the particular circumstances of the case.
8. The Council make reference to a recent dismissed appeal for the erection of a 3 bedroom dwelling on garden land (APP/H5960/W/18/3204926) to support their case. I acknowledge that the inspector in that case did indicate that the Council has justified development plan policy DHM4, in demonstrating that housing targets can be met without relying on garden land and by underlining the significant contribution that gardens make to the character and appearance of the built-up urban Borough. I do not defer from that general position in relation to the justification for the policy, however the Inspector also found that scheme was out of character with the area and conflicted with DHM4a as such the two schemes are not directly comparable.
9. Having regard to the criteria of policy DMH4a the Council have not identified any conflicts. From the details before me the new property would comply with internal space standards, achieve adequate daylight, and provide adequate outdoor amenity space for both the existing and proposed dwellings. Additionally, the proposal includes the provision of a wildflower roof to offset the environmental loss of the garden.
10. Furthermore, a material consideration in this case is that planning permission has recently been granted by the Council for an extension to No 1¹ which is of an identical scale and form as the proposed house. The same amount of garden land would be built upon. This undoubtably confirms that it is not the loss of garden per se which is of concern at this site, nor that the scale and design of development would have an adverse impact on the character and appearance of the area. The Council suggest the difference is the intensification of the site, although again no specific concerns have been identified in terms of residential amenity. The resultant garden space would have the same relationship with the surrounding area whether it remains part of No1 or through subdivision becomes garden for the new property.

¹ LPA reference 2019/1005

11. In conclusion, I accept that development on garden land would be in conflict with policy DMH4 with regards to the presumption against such locations for development. Notwithstanding this, I do not find that the scheme would undermine the objectives of the policy nor would there be any identified adverse harm to the character of the area or neighbours. These matters together with the fallback position of the extant consent justify an exception to this policy in this case. The proposal otherwise accords with the development plan when considered as whole, and specifically the criteria under DMPD policies DMH4 and DMS1 and supporting SPDH, together with London Plan 3.5 which seek to ensure that developments are of an appropriate urban design and maintain the quality of the environment.

Other Matters

12. Reference has been made by the parties to the emerging London Plan, with particular reference to policy H2 which indicates that small sites should play a much greater role in housing delivery and that well designed new homes should be supported. I have not been provided with specific details regarding the exact stage of examination, or if there are any unresolved objections to the policies cited. Therefore, having regard to paragraph 48 of the Framework, these policies can only be given limited weight and I have based my decision upon the adopted development plan policies.
13. Whilst I acknowledge the Council's concerns, given the specific circumstances of this case, allowing the appeal will not in my view set a precedent for other garden land development as each case must be considered on its own merits.

Conditions

14. The conditions imposed are those which have been suggested by the Council but with some variation in the interests of clarity and precision having regard to the advice on imposing conditions in the Planning Practice Guidance.
15. Conditions are necessary in the interests of compliance with statutory requirements relating to the commencement of development [1] and certainty [2]. Given the materials are different to the existing property and in the interests of visual amenity details and samples of the external materials should be approved before work commences [3]. As of 1 October 2018, any planning permission granted on or after that day with pre-commencement conditions imposed must have written agreement of the applicant/appellant to the wording of those conditions. The appellant has confirmed their agreement to this pre-commencement condition.
16. A condition is also necessary to ensure appropriate provision is made for refuse storage [4] and conditions [5 and 6] are necessary to secure energy efficiency and water efficiency within the development.
17. As requested by the Council I also impose a condition to ensure the green roof is not used as an outside recreational space. This is necessary in the interests of safeguarding the living conditions of nearby residents and to maintain the environmental off set [7].
18. The Council have suggested a condition removing permitted development rights, although no reason has been provided, and I do not consider a blanket removal would be appropriate or necessary.

19. Additionally, given the TPO'd trees on site and the proximity of the development I consider it is necessary to ensure that these are protected in accordance with the details set out in the submitted Arboricultural Report [8].

Conclusion

20. For the reason set out above I allow the appeal and planning permission is granted.

G Ellis

INSPECTOR

Schedule of Conditions

- 1 The development hereby permitted shall be begun within 3 years from the date of this permission.
- 2 The development shall be carried out in accordance with the approved plans and details: PA-01 Rev 03, PA-02 Rev 02, PA-03 Rev 01, PA-04 Rev 01, PA-05 Rev 01, PA-07 Rev 01, and PA-08 Rev 01.
- 3 No development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 4 The development hereby permitted shall not be occupied until details of refuse and recycling facilities have been submitted to and approved in writing by the local planning authority. The refuse storage facilities shall be provided in accordance with the approved details and shall be retained thereafter.
- 5 The development hereby approved shall achieve a minimum of a 19% reduction in CO2 emissions below the maximum threshold set in Building Regulations Part L 2013. Prior to first occupation of the development, evidence (e.g. photographs, copies of installation contracts and as-built worksheets prepared under SAP) shall be submitted to and approved in writing by the local planning authority, to demonstrate that the development has achieved at least a 19% reduction in CO2 emissions below the maximum threshold set in Building Regulations Part L 2013. The installed measures shall be retained in accordance with the approved details unless otherwise agreed by the local planning authority.
- 6 The development shall achieve a maximum water use of 105 litres per person per day (plus 5 litres for outside use) in line with the Water Efficiency Calculator for new dwellings from the Department of Communities and Local Government. Prior to first occupation, evidence to demonstrate that the internal water consumption of the development will not exceed 105l/p/day must be submitted to the local planning authority and approved

- in writing, unless otherwise agreed in writing by the local planning authority. The installed measures shall be retained in accordance with the approved details unless otherwise agreed by the local planning authority.
- 7 The roof area of the development hereby permitted shall not be used as a balcony, roof garden or similar amenity area and no balustrades, railings or other means of enclosure or means of permanent access shall be erected on this area.
- 8 All the trees identified in the BS 5837 Arboricultural Report dated 26 April 2018) as to be retained and any trees whose canopies overhang the site shall be protected in accordance with details on the Tree Protection Plan – CCL09758b/TPP. The fencing shall be erected before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.