
Appeal Decision

Site visit made on 20 August 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Appeal Ref: APP/L5240/W/19/3232196

50 - 52 Bensham Grove, Thornton Heath CR7 8DA

- 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 PA Housing of Paragon Asra Housing Limited against the decision of the Council of the London Borough of Croydon.
 - The application Ref 18/05008/FUL, dated 8 October 2018, was refused by notice dated 11 January 2019.
 - The development proposed is the demolition of existing building and erection of 2 three storey blocks comprising 2 x 1 bedroom, 10 x 2 bedroom and 8 x 3 bedroom flats.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding the address provided on the planning application form, I agree with the main parties that the appeal site also includes 50 Bensham Grove. I have therefore reflected this in the address set out above.
3. Since the Council refused planning permission, the appellant company has engaged with the Council to discuss their concerns which led to the first and sixth reasons for refusing planning permission. These reasons relate to marketing evidence and a drainage strategy. In response to the former, the appellant company has submitted a revised marketing assessment which demonstrates that the appeal site is unsuitable for the retention of an employment use or a community use. The Council has confirmed that they are satisfied that the site has been marketed for 18 months and that there was no demand for a continuing employment use on the site.
4. In terms of the latter, the Council have sought the views of the Lead Local Flood Authority who have now removed their objection to the proposal, subject to the imposition of a planning condition to secure detailed designs of a surface water drainage scheme. On this basis, the Council confirm that their concerns insofar as the first and sixth reasons for refusing planning permission have been addressed. I have no reason to form a different view.

Main Issues

5. The main issues are the effect of the proposed development on: (i) the living conditions of the occupants of 48 Bensham Grove and 5 Garratt Close, with regards to privacy; (ii) the living conditions of future occupants of the proposal,

with regards to daylight, ventilation, outlook and amenity space provision; (iii) the provision of housing, including affordable housing, with regards to mix and tenure; and (iv) the character and appearance of the area.

Reasons

6. The appeal site is located on the eastern side of Bensham Grove. The site is occupied by an L-shaped, part single / part two storey light industrial building. The land around the buildings is hard surfaced. A gated vehicular access is at the southern end of the site's frontage onto Bensham Grove. This part of Bensham Grove displays a varied character due to the mix of residential and commercial properties. To the south is No 48, a two-storey semi-detached dwelling. To the rear of the site is a new residential development on Garratt Close. Properties to the north and opposite the site are commercial in nature.

Living conditions of No 48 and No 5

7. Side onto, and to the rear of block B is No 5. This property has a front and rear outlook on the ground and first floors with a private garden behind proposed flats 12, 16 and 20. No effect would be generated by proposed flat 12 due to the presence of the timber boundary fence. Subject to the use of a privacy screen for flat 16's terrace and flat 20's balcony, there would be no loss of privacy for the occupants using the rear garden of No 5. Moreover, no adverse effect would be generated by proposed flat 12 due to the presence of the timber boundary fence. Even so, the windows serving the kitchen/dining/living room in flats 16 and 20 would provide direct views into the rear garden of No 5. Hence, the living conditions of the occupants of No 5 would not be protected in this regard.
8. Within the front elevation of No 5 there are habitable room windows at ground and first floors nearest to the appeal site. There would be no direct overlooking into the ground floor window of No 5 from flat 11 due to the timber fence, but views into the first-floor window would be possible. Even if a privacy screen is used for the balcony serving flat 15, the three bedrooms proposed in this flat would offer direct views of the ground and first floor windows in No 5. I recognise that the relationship would become increasingly oblique towards the centre of block B, but the interface between No 5 and block B would be close. A similar effect would be caused by the rear facing windows in flat 19. While these openings would be recessed and face out onto a balcony, direct overlooking could take place from these rooms into those in the front elevation of No 5. The effect would not be mitigated by the use of a privacy screen as this would need to be of some height to prevent direct overlooking. Also, the use of obscure glazing would in this situation, in the same way as a privacy screen would, affect the living conditions of future occupants of flat 19.
9. No 48 is set away from the timber fence that lines the common boundary. The rearmost part of the property steps in from its flank elevation. On the ground floor of the two-storey outrigger is a window and a door which have an outlook into the site. There are also ground and first floor windows in the rear elevation of the property.
10. There would be no direct relationship between any of the windows proposed in block A and No 48. A planning condition could secure the proposed privacy screens for the balconies and terraces in block A to protect the living conditions of the occupants of No 48 to alleviate any perception of overlooking or loss of

privacy for the occupants of No 48. Block B would be sited some distance from No 48 and its windows. As such, there will be no direct overlooking and any perception of overlooking or loss of privacy can be reduced through the use of privacy screens to terraces for example. I note the Council's concern about such measures leading to a diminished standard of accommodation for future occupants, but I do not agree, given that such measures are common place.

11. Although some overlooking is common place in the area, and the site has previously been used as a factory, the effect of block B on the living conditions of the occupants of No 5 would be at a close range to their habitable room windows and private outdoor space. Even if a residential use may be more compatible in land use terms, I conclude, in respect of this issue, that significant harm would be caused to the living conditions of the occupants of No 5, with regards to privacy. My conclusion in respect of No 5 outweighs my findings regarding No 48. As such, the proposal would not accord with Policy DM10.6 of the Croydon Local Plan (CLP) and paragraph 127 f) of the National Planning Policy Framework (the Framework), which jointly seek to ensure a good standard of amenity for all existing and future occupants by not having direct overlooking at close range of habitable rooms or private outdoor space.

Living conditions of future occupants

12. There is no dispute that the proposal complies with the minimum floorspace standards. Instead, the Council raise concern with a number of the proposed flats having a single aspect. CLP Policy DM10.6 seeks development to provide adequate sunlight and daylight to potential future occupants. Framework paragraph 127 a) and f) seek development that functions well and creates places with a high standard of amenity for existing and future users. Standard 29 of the Mayor of London Housing Supplementary Planning Guidance (SPG) states that developments should minimise the number of single aspect dwellings. Single aspect dwellings that are north facing or which contain three or more bedrooms should be avoided. The benefits of dual aspect dwellings are outlined in the SPG, in terms of daylight, sunlight, ventilation, views and use of the rooms.
13. The windows shown on the submitted plans and in the Design and Access Statement do not suggest that they would open. If true, then all the proposed flats would be single aspect dwellings having regard to the SPG definition. However, a planning condition could be used to ensure that some or all the upper floor windows are openable. This approach would not be suitable for the ground floor windows as it would pose a security risk. If I were to adopt this stance, even though it has not been suggested to me by the main parties in the form of a suggested planning condition, the proposal would result in single aspect flats on the ground floor facing north-west and north-east (flats 1, 2, 10 and 11) having regard to the SPG's dual aspect dwelling definition.
14. Each of these flats would have aspects either close to the site's boundaries, which comprise of a timber or chain link fence. Beyond the chain link fence to the north is a linear shaped building. This building is near to the common boundary and there would be little interface between it and the proposed buildings. The combination of the proposed layout and the relationship with existing boundaries or buildings leads me to consider that the proposal would result in a detrimental effect on the living conditions of future occupants of flats 1, 2, 10 and 11, in terms of adequate levels of daylight, ventilation and

outlook. I note the appellant company's reference to Building Regulations, but my findings solely relate to the planning merits of the case.

15. Notwithstanding the Council's concerns, the quantum of private and communal amenity space proposed accords with the minimum amount stipulated by CLP Policy DM10.4 and SPG standard 26. However, CLP Policy DM10.4 explains that all flatted development and developments of 10 or more houses must provide a minimum of 10m² per child of new play space.
16. The proposed layout would provide around 60m² of new child play space on the site. This is significantly below the minimum standard of around 230.6m² of new child play space based on CLP Table 6.2 regardless of the other amenity space provision. Northwood Road Playground is nearby and the appellant company is willing to provide a financial contribution towards the upkeep of this space in lieu of any deemed inadequacy of on-site play space. However, there are no details of how this financial contribution would be calculated in respect of the London Borough of Croydon, when it would be provided and what it would seek to address. In any event, CLP Policy DM10.4 is phrased in the context of 'new' play space and not refurbished or improved. Even if I was satisfied that these matters could be addressed, there is no suitable mechanism before me, such as a planning obligation or planning condition that would secure the necessary mitigation given the extent of on-site provision.
17. I therefore conclude, on this issue, that significant harm would be caused to the living conditions of future occupants of the proposal, with regards to daylight, ventilation, outlook and amenity space provision. The proposal would not accord with CLP policies DM10.4, DM10.6, CLP Table 6.2, Policy 7.1 of the London Plan (LP), the SPG, and Framework paragraph 127 a) and f); which collectively seek, among other things, all new residential development through their design to provide adequate daylight to potential future occupants; and provide minimum amounts of private and new play space so that they create places with a high standard of amenity for future users.

Affordable housing and housing mix

18. CLP Policy SP2 states that the Council will seek to ensure that a choice of homes are available in the Borough that will contribute to addressing the borough's need for affordable homes. LP Policy 3.3 explains the pressing need for more homes in London and LP Policy 3.8 states that Londoners should have a genuine choice of homes. CLP Policy SP2.4 explains that the Council will seek to achieve up to 50% affordable housing provision on sites with ten or more units, subject to viability. Furthermore, the policy sets out that the Council will seek a 60:40 ratio between affordable rented homes and intermediate homes unless there is agreement between the Council and a Registered Provider that a different tenure split is justified. This approach is also supported by the Mayor's Affordable Housing and Viability SPG (AHVSPG).
19. Each of the proposed units would be shared ownership (intermediate) affordable housing. No social rented accommodation would be provided. Hence, the proposal does not accord with the tenure split set out in CLP Policy SP2.4. However, the appellant company has submitted a Financial Viability Assessment (FVA) which states that a different affordable mix would render the scheme unviable. The FVA has been independently assessed by Council's specialist who considered that the scheme could provide 30% affordable housing on the site with a 60:40 tenure split of rented and shared ownership

housing. They also explained that given the appellant company's preferred 100% affordable housing approach, that these units could be provided in the form of 6 no. rented and 14 no. shared ownership units.

20. While the appellant company may not have been given the opportunity to respond to the Council's position before the planning application was refused, they have not provided substantive evidence that disputes the Council's analysis as part of their appeal submissions. I understand that since the appeal was lodged, efforts have been made by the appellant company to try and find additional or alternative funding sources to enable the proposal to come forward with an improved mix of tenure, but this has not been possible.
21. There is no dispute between the main parties that affordable homes in Croydon are needed. The evidence before me also indicates that a policy complaint tenure split could be achieved on the appeal site. There is no planning obligation before me which would secure such a provision, but the appellant company is willing to accept a planning condition to secure a policy complaint tenure split. However, the suggested planning condition lacks precision and provides a further opportunity for viability to be assessed. I cannot therefore be certain it the suggested condition is necessary.
22. In terms of the housing mix, Table 4.1 of CLP Policy DM1 seeks a minimum of 60% to be three bedroom or larger units on sites with ten or more dwellings. CLP Policy DM1.1(b) states that within three years of the adoption of the CLP, where a viability assessment demonstrates that larger homes would not be viable, an element may be substituted by two-bedroom, four person homes. The proposal includes 8 x 3 bedroom units (40% of the total units) and a 2 bedroom 4 person unit. This takes the total provision of family homes to 45%. This is below the minimum percentage set out in Table 4.1 and as a result the proposal would not deliver housing choice or result in the creation of a balanced community that meets Croydon's housing need.
23. I therefore conclude on this issue that significant harm would result from the proposed housing mix and the proposed mix and tenure of affordable housing. The proposal would not accord with CLP policies SP2.4, DM1 and Table 4.1, LP Policies 3.3 and 3.8 and the AHVSPG; which jointly, among other things, seek to deliver the affordable homes that Croydon needs with a choice on tenure and with an appropriate housing mix to create a balanced community.

Character and appearance

24. CLP Policy DM10.1 explains that proposals should be of high quality and, whilst seeking to achieve a minimum height of three storeys, should respect: the development pattern, layout and siting; the scale, height, massing and density; and the appearance, existing materials and built and natural features of the surrounding area. On this basis, there are no concerns with the principal of a three-storey development on the site. Furthermore, planning conditions could be imposed to secure materials that are appropriate for the site's context.
25. Planning permission was granted by the Council for a mixed residential and place of worship scheme¹ ('the approved scheme'). While this scheme has not been built out, and there may be issues around the viability of this scheme, the planning permission remains extant, and hence there is a theoretical possibility

¹ Council Ref: 17/00198/FUL

that the development might take place. Evidently, there are differences between the approved scheme and the appeal proposal in terms of the respective uses. Furthermore, the approved scheme comprised of a single entity of built form split across three floors, albeit the first and second floors would have offered a communal garden and a terrace respectively. The proposal on the other hand comprises of two separate blocks. That said, the proposed design of block A, which addresses Bensham Grove, has been based on the scale, massing, siting, form and appearance of the approved scheme.

26. I note the Council's concerns about block A, but the width, scale, massing, design and appearance of this block would reflect the approved scheme. I note the changes to the refuse storage, but this would be beneath the upper floors of proposed block A in roughly the same location as the approved scheme. Furthermore, the proposed undercroft would be similar to the approved scheme. Likewise, the position of the main entrance would be set back and beneath the undercroft on an angle. For these reasons, I do not share the Council's concerns insofar as block A.
27. The Council refer to the proposal being an overdevelopment of the site. Both CLP Policy SP2 and Framework paragraph 122 advocate the efficient use of land. However, a balance must be struck. Having regard to LP Table 3.2 and the site's Public Transport Accessibility Level rating of 1b, the proposal's density is significantly above that found in the density matrix. However, the number of habitable rooms per unit broadly accords with LP Table 3.2.
28. A flexible approach is needed to determine the appropriate potential of the site. Framework paragraph 118 (d) promotes and supports the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively. Aside to the proposal's merits in terms of affordable housing provision, the appeal scheme would make effective use of land in an urban area given that it has been vacant since September 2016, having been last occupied by an engineering firm that manufactured machinery relating to the cosmetics industry.
29. Block B is proposed to the rear of the site. It would extend across the width of the site roughly to the same extent as the existing building which it would replace. Block B would therefore, in respect of its siting and relationship to the site's boundaries to the north and south, be comparable to the existing building. On its own merits, the design of block B would not be high quality. However, its design would be consistent with that of block A. Given my earlier findings about block A, and in an area where there is no single prevailing character or appearance, it is, on balance, acceptable. There is also no requirement for block B to be subservient to block A, especially given the scale and massing of the residential development on Garratt Close to the rear.
30. I note the Council's point about the provision of a pedestrian and cycle route to increase permeability in the area, but based on the scheme that is before me, I conclude in terms of this issue that the proposal would, on balance, not harm the character and appearance of the area. Thus, the proposal would accord with LP policies 3.5, 7.1, 7.4 and 7.6, CLP policies SP4 and DM10 and Framework paragraphs 118 (d) and 122. Collectively these seek, among other things, high quality development that respects development pattern, layout, siting, scale, massing and density of the surrounding area.

Conclusion

31. I have found that the appeal scheme would not result in harm to the character and appearance of the area; the living conditions of No 48; the living conditions of future occupants, with regards to internal living space and amenity space; the retention of an employment use or a community use; and as a result of the proposed drainage strategy. Added to this, I agree with the appellant company about the proposal's effect on highways, cycle and parking provision and sustainability. The proposal would also make a contribution towards the provision of affordable housing in Croydon.
32. However, balanced against this is the significant harm that the proposed development would cause in terms of future occupants living conditions; the living conditions of the occupants of No 5; the proposed housing mix and tenure of affordable housing; and the provision of child play space. These matters outweigh the benefits of the proposal or its compliance with other development plan policies or guidance. I also do not consider that the flexible approach explained in Framework paragraph 123 c) should apply in this case as the appeal scheme would not provide acceptable living standards for the other reasons that I have explained above.
33. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR