The Planning Inspectorate

Appeal Decision

Site visit made on 12 August 2019

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2019

Appeal Ref: APP/N5660/W/19/3228852
Rear of 15 Kempshott Road, London SW16 5LG

- 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 C Clarke against the decision of the Council of the London Borough of Lambeth.
- The application Ref 18/04814/FUL, dated 8 November 2018, was refused by notice dated 16 January 2019.
- The development proposed is Demolition of existing storage building and proposed new 2-bed single-storey house with court yard garden, associated landscaping, refuse and recycling together with parking.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The address of the application site was originally described on the application form as '15 Kempshott Road, London SW16 5LG'. The address has been altered on the appeal form and this is reflective of the site address in the banner heading above which more clearly identifies the appeal site.

3. There is no description of development available on the application form. Whilst an alternate description of development is included on the decision notice, the above description that is provided on the appeal form sufficiently describes the development proposed.

4. One area of disagreement between the parties is the lawful use of the appeal site. The appellant considers the garage to have a B8 (Storage) use and to form a separate planning unit, while the Council maintains the building has a C3 use in association with 15 Kempshott Road. I note that a statutory declaration, legal opinion and other documents are provided in support of the appellant's case.

5. However, there is no evidence before me that confirms the lawfulness of the existing use of the appeal site and in any event, this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply to have that matter determined under sections 191 or 192 of the Act and any such application would be unaffected by my determination of this appeal.

6. I therefore afford only limited weight to the appellants case in relation to such a fallback position.

Main Issues

7. The main issues are:

   i) Whether the proposal would provide an appropriate provision for affordable housing;

   ii) The effect of the proposal on the living conditions of the occupiers of 13 and 15 Kempshott Road with particular regard to outlook, privacy, noise and disturbance;

   iii) Whether the amenity space provision would be of sufficient quality; and

   iv) The effect of the proposal on the character and appearance of the area.

Reasons

8. The appeal site sits to the side and rear of 15 Kempshott Road, which in conjunction with the neighbouring No 13 form an imposing pair of semi detached properties. Both have gardens to the rear with the garden serving No 15 divided into two parts to serve different flats.

9. The appeal proposal is to demolish the existing garage and construct a single storey two bedroom property with courtyard, with foot access provided along the side elevation of No 15.

Affordable Housing

10. The Council set out that there is an acute shortage of affordable housing across London and evidence suggests the demand for affordable housing in Lambeth will remain very high. Lambeth's Strategic Housing Market Assessment (October 2017) indicates that between 1,047 and 1,573 affordable homes would be required annually to meet affordable housing need over the development plan period.

11. Additionally, the Council have produced a note to address the delivery of affordable housing from sites providing fewer than 10 units, titled Lambeth Local Plan Small Sites Affordable Housing Policy: considerations for planning decision makers (October 2017). This provides evidence that small sites make a significant contribution to Lambeth's housing supply, both in terms of approvals and completions. I have no reason to disagree with these findings.

12. Policy H2 of the Lambeth Local Plan (2015) (LLP) seeks to ensure the provision of affordable housing to address housing need and requires that sites providing fewer than 10 units make a financial contribution towards the delivery of off-site affordable housing.

13. In contrast, the National Planning Policy Framework (the Framework) details that provision of affordable housing should not be sought for residential developments that are not major developments.

14. Nonetheless, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

15. From the information before me there appears to be strong and compelling evidence that in order to respond to significant, evidenced affordable housing need in the borough, development of this sort and scale should help address that need notwithstanding the contents of the Framework.

16. Therefore, although the Framework is a weighty material consideration, it would not outweigh the development plan in this instance. The appeal should be determined in accordance with the development plan, namely Policy H2 of the LLP.

17. Although the evidence indicates that the appellant has made contact with the Council relating to a planning obligation, the proposal makes no provision for the delivery of off-site affordable housing.

18. This is not a matter which could be resolved through the addition of a condition as suggested by the appellant.

19. This is because Planning Practice Guidance (PPG) advises that a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence will only be appropriate in exceptional circumstances. Given the small scale of the proposal, it is not strategically important and would not therefore represent an exceptional circumstance in the terms of the PPG.

20. Consequently, the proposal would fail to provide an appropriate contribution towards off site affordable housing provision. This would conflict with Policy H2 of the LLP.

Living Conditions

21. The Council consider that the appeal proposal by reason of its close proximity to and height above the existing boundary treatment would result in a sense of enclosure that would result in a loss of outlook for the occupiers of 13 and 15 Kempshott Road.

22. There is disagreement between the parties as to the proposed height of the dwelling above the existing boundary treatment. The appellant suggests that the height of the existing fence has been incorrectly measured resulting in the measured height above the fencing being over stated and have supplied an additional plan (Drawing ref P58 'boundary height relative to existing walls and fences'). The Council consider that the height above the boundary with the garden of 13 Kempshott Road would be 530mm while the height above the boundary with the garden of 15 Kempshott Road would be 510mm. I have no basis to disagree with the Council on the basis of the evidence submitted including the additional plan, because this has very limited detail, and have determined the appeal on this basis.

23. The appeal proposal has been accompanied by a sun path analysis and as a result of this the Council accepts that there would be no significant loss of sunlight to the gardens of either of the above properties. The Council also note that the appeal proposal by reason of its height would not result in a loss of sunlight or daylight to the rooms of No 15 (which is closer to the appeal proposal than No 13). They also note that there would be no loss of outlook from No 15. I have found no reason to disagree.

24. The appeal proposal would have little separation from the boundary with the gardens of No 13 and No 15. The appeal proposal would though have a significant set off from the rear elevations of the properties. Robust planting close to the boundaries already adds a sense of height to the existing boundary treatment. Therefore, as a result of these factors and as there would be no significant impact on sunlight, I do not find that there would be any significant adverse effect on the living conditions of the occupiers of 13 and 15 Kempshott Road in terms of any effect on their garden areas.

25. I note the presence of the lower ground floor windows on the side elevation of No 15 which look out over the side access. Whilst the evidence submitted does not detail the internal arrangement of the flat which they serve, the Council suggests that the rooms are habitable. However, even if this were the case, the windows are small in size and would inevitably already suffer from some degree of disturbance associated with any existing use of the access and garage. I do not therefore consider that comings and goings associated with one small dwelling would be significantly greater. Whilst lighting is proposed, it would be possible to condition a scheme such that lighting would be appropriately designed and positioned such that it would not have a detrimental impact on the living conditions of the occupiers of No 15.

26. Consequently, the proposal would not have a significant effect on the living conditions of the occupiers of 13 and 15 Kempshott Road with particular regard to outlook, privacy, noise and disturbance and would therefore accord with Policy Q2 of the LLP which seeks to protect residential amenity.

Character and Appearance

27. Policy Q14 of the LLP relates to development in gardens and on backland sites. The Council considered that the appeal proposal should be assessed under part C of this Policy, which relates to development in rear gardens. Notwithstanding the disagreement between the parties over the lawful use of the site, the evidence indicates that the appeal site does not function as a rear garden. The appeal proposal should, therefore, be considered against part E of the policy which relates to previously developed backland sites.

28. The proposed development is modest in scale in comparison to the imposing 15 Kempshott Road. The limited height of the building would be reflective of nearby backland development particularly in relation to a block of garages which sit immediately to the south west of the site.

29. Consequently, the appeal proposal would be acceptable in terms of its effect on the character and appearance of the area and would therefore accord with Policy Q14 of the LLP in relation to development on backland sites.

Amenity Space

30. Access space and bin / cycle storage areas would limit the use of the whole of the rear courtyard as private amenity space. However, at least some of the space either side of the access path leading from Kempshott Road to the dwellings, would provide pleasant, if relatively narrow additional garden area and as such should be taken into account. On that basis, the private amenity space proposed would exceed the requirement of LLP Policy H5.

31. My attention has been drawn to another appeal which deals with similar issues to those identified above. However, I am not familiar with all the circumstances of that proposed development and as such I can only afford it limited weight. In any event each case must be determined on its own merits.

32. I note the requirements of LLP Policy Q2 which requires amongst other things that outdoor amenity space be free from excessive enclosure and overshadowing. The sun path analysis shows that the private amenity spaces would experience a degree of shading. However, along with there being some sunlight within the amenity space at 4pm in June, sunlight is also shown at 8am in June. This indicates that in the summer, when the amenity space would be most commonly used, the areas would receive some sunlight which I consider would be acceptable.

33. Consequently, the appeal proposal would provide private amenity space which would be of sufficient size and quality and would therefore accord with Policy H5 and Q2 of the LLP.

Conclusion

34. Notwithstanding the lack of harm identified in relation to the matters outlined above, as the proposal would fail to provide an appropriate contribution towards off site affordable housing provision, I conclude that the appeal should be dismissed.

T J Burnham

INSPECTOR