Appeal Decision

Site visit made on 29 July 2019

Hearing held 30 July 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2019

Appeal Ref: APP/A5840/W/18/3214777
1a Dog Kennel Hill, London SE22 8AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Land Edition against the decision of the Council of the London Borough of Southwark.
- The application Ref 17/AP/4097, dated 26 October 2017.
- The development proposed is a "Full planning application for erection of a 6 storey residential building to provide 16 x 2 bed units and 6 x 3-bed units, with suitable provisions of suitable refuse/recycling and secure bicycle storage."

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal results from the Council's failure to determine the planning application within the statutory period. Although there is no formal decision from the Council, it has considered the proposals and indicated that had it been in a position to determine the application it would have refused permission. The Council would have refused the proposal due to the reasons that form the main issues below, including the provision of affordable housing to meet with policy requirements. From this, I established at the hearing that there is no dispute between the Council and appellant on any of the aspects of the proposal, other than those raised by the Council in their putative reason for refusal.

3. Amended plans have been received during the appeal process, which omit the originally proposed bicycle storage in a basement and instead include an external bicycle store. These amendments address the Council's concerns with regards the provision of convenient and accessible bicycle storage and they confirmed at the hearing that they have no objections on this matter. The Council also confirmed that they consider the amended plans would not prejudice any interested party and so a further consultation was not required based on the amended plans. I agree with this conclusion on the matter and so I have included the amended plans with my assessment.

4. With agreement, subsequent to the hearing, the appellant submitted a planning obligation by unilateral undertaking (UU) made under Section 106 of the Town and Country Planning Act 1990 (as amended). The UU was signed and

executed, dated 2 August 2019. This UU covers matters such as affordable housing provision and highway/parking restrictions, for example. I have considered the UU as part of my assessment of this appeal.

Main Issue

5. The main issue is whether the affordable housing is the maximum reasonable in the light of development plan policy and related guidance.

Reasons

Background and policy context

6. The appeal site fronts Dog Kennel Hill, near the junction with Champion Hill, in a primarily residential area of London. The area comprises both houses and blocks of flats. There was a single dwelling on this plot, which has since been demolished. The site is boarded-up and overgrown at the time of my site visit.

7. This is a proposal for flats on the site over 6 storeys. This follows planning permission for 9 town houses (ref: 10/AP/1891). This permission is extant as development has commenced, but there are no dwellings built on the site. The developer now wishes to build the flat scheme now subject to this appeal, although has indicated that the town houses would be implemented if they did not receive planning permission.

8. Paragraph 57 of the National Planning Policy Framework (the Framework) states that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It also states that "It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage." Paragraph 64 of the Framework expects at least 10% of homes in major housing developments to be made available for affordable homeownership.

9. It is common ground between the parties that there is a significant need for both market and affordable housing in Southwark and across London. Policies of the London Plan 2016 (LP) seek increased housing supply, housing choice, and maximising affordable housing provision. This includes LP Policy 3.12 which states that the maximum reasonable amount of affordable housing should be sought from private residential schemes having regard to several points, including that affordable housing should normally be provided on-site.

10. Strategic Policy 6 of the Southwark Core Strategy 2011 (CS) requires as much affordable housing as is reasonably possible and financially viable, on developments of 10 or more units and expects provision of a minimum 35% affordable housing.

11. For the purpose of viability assessment, the Planning Practice Guidance (PPG) states that alternative use value (AUV) refers to the value of land for uses other than its current permitted use. It does not relate to other potential developments that requires planning permission, technical consent or unrealistic permitted development with different associated values. AUV may be informative in establishing benchmark land value (BLV). If applying alternative uses when establishing BLV, these should be limited to those uses which have an existing implementable permission.

12. In this case it is submitted that the BLV is effectively the AUV, being the residual land value of the extant permission for 9 dwellings. Initial negotiations between the Council's representatives at the time (BPS) and the developer and their representatives (DS2) led to a proposal including one affordable housing unit within the development. Since the appeal was submitted a revised and updated viability appraisal has been submitted by the appellant which has resulted in 4 affordable housing units proposed to be provided on site. This is now above the 10% minimum set within the Framework, but still below the policy compliant total of 8 required by the Council.

13. The Council's updated viability appraisal has been undertaken by the company 'Avison Young' which has demonstrated that taking the AUV into consideration a policy compliant 8 affordable units could be provided.

14. It is the difference in what the appellant and the Council consider can be provided towards affordable housing within the scheme and still be a viable development that is the issue in dispute with this appeal.

Extant Permission

15. As discussed above, to set a BLV that is appropriate to inform the viability of the proposed development, then the ALV based on the extant permission for 9 dwellings needs to be considered.

16. There are some significant differences between the appraisals of the extant scheme between the parties. This has resulted in a substantial difference in the residualised price which in turn informs the BLV for the proposed development with this appeal.

17. The developer estimates that the 9 houses would be more costly to build than the Council's estimate, with more in fees and marketing also. As the agreed 20% profit is based on cost, then the developer's assessment would see a greater profit to the developer. However, as the developer considers the demand for the proposed houses to result in a sales value of approximately £10.6 million then they have calculated a residualised price of £807,935. However, the Council has argued a much lower residualised value.

18. A significant difference is the sales valuation, which the appellant sees as much higher than the Council. In this regard, whilst town houses in general are common in London, I would accept that the development as approved is unusual, being three bedroom houses over multiple floors in what would be particularly tall houses. There are not many comparables of town houses such as this, which as heard in the hearing, could be because the amount of storeys with only three bedrooms would potentially reduce saleability. Even with the views this would provide for future residents, this would, to my mind, depress the sales value of these houses as there would be a relatively small market for these dwellings, as has been indicated through the Council evidence.

19. Furthermore, in the submitted Design and Access Statement the appellant states that a reason for the revised flats proposal was based on "market advice" and "The appropriateness and saleability of larger units in this location", in reference to the extant permission for the town houses.

20. The appellant has also explained that the changing market and the influence of 'Brexit' is such that the proposed flats would be preferable. They may be more

easily rented out for example. Whilst I understand these concerns, this points to the issue of the saleability of these larger town houses at this time.

21. Furthermore, the Council has provided examples of comparable developments, concentrating on new build developments, which I regard as appropriate as the best source of comparison. I recognise that the examples raised in the Council's evidence have various factors which differentiate their setting and circumstances from that of the extant scheme, but they are still valid comparables, with many units having a sales rate of similar to that set by the Council's appraisal. I also note the advice from Hamptons on the sales value of the extant development being at a similar level to the Council's estimation.

22. I recognise that Hamptons provided a potential price for the 9 dwellings at £1,750,000 in 2016 for the appellant, which is significantly more than their current estimation by the same company. I would regard it unlikely that this area of London has seen a drop in house prices that the different Hamptons responses suggest, but I would give more weight to the opinion of Hamptons given more recently as this appears to be a more in-depth assessment and based on 2019 market conditions.

23. The appellant has other agent responses giving a price for the 9 houses of the extant scheme. However, I note that the Savills and Caddinton responses refer to up to 5 bedrooms (rather than the 3 bedrooms approved), which would likely have an influence on the pricing. I recognise that in reality the future occupiers could be flexible with the use of rooms, but the houses were proposed and approved as three bedroom dwellings. It was also clearly the intension that these would be three bedroom houses as this was what was applied for. If sold as three bedroom houses, then this would have an implication for the price. Further bedrooms would also mean less other type rooms within the houses, for example. I have therefore based my assessment on the extant permission being for 3 bedroom houses.

24. There is also the response from 'Modern House' from 2019, but this is very brief and does not state which comparables they used to come to their valuation, which they also state is just a guide for marketing rather than a formal valuation. The other Modern House letter is from 2016, but the market for the approved houses may have changed in this time.

25. Finally, there is the longer valuation report from Kempton Carr Croft from 2018. They have concluded, when comparing the site to others sold in the area, the sales rate would be circa £650 per square foot. This is significantly above the appellant's own estimate, but this appears to have been based on larger houses than were actually approved at this site.

26. Whilst I have taken these agent comments into account, I do not have all the details of what was being considered and what questions were asked of these companies when coming to their estimated figures. There also appears to be some inaccuracies as mentioned.

27. There has been a number of comparisons to other sites where town houses have been built. Again, I have concentrated on the new-build developments as these are the most comparable. The appellant has highlighted several sites, which the Council has responded to with recent information.

28. An example is the development at 1 Peel Terrace. It is apparent from the Council's information that there was difficulty selling these dwellings, even with price reductions. Furthermore, these were four-bedroom town houses in an area which is stated as 'superior' to the subject site in terms of how it effects sales price of housing.

29. The site highlighted by both parties is at No 2 The Tribeca, which was for town houses. However, there are differences to the permitted scheme at Dog Kennel Hill as these are 4 bedroom houses with underground parking. Only one has been sold, according to the Council, with a sales rate of £758sq.Ft.

30. The appellant has also highlighted Grove Park (St Johns Orchard) development, but this is a conversion of a traditional Victorian building rather than a new build development and therefore I do not find this as directly comparable.

31. What these examples and the others highlighted by the parties show is that there are few direct comparables to the permitted scheme of three-bedroom townhouses. Some of the examples are in 'superior' locations and some have four bedrooms, for example. The Council has also provided evidence of other new build development of evidence of schemes with similar sales value to the 9 houses approved at this site, although I note these are also not directly comparable in terms of location, for example.

32. There does appear from the evidence submitted that there have been some issues with selling some townhouses, which might be a reflection on the market. As such, I regard the comparisons made to other new-build developments in the area suggests that there may be a smaller market for townhouses in this area and that the Gross Development Value (GDV) is more likely towards the lower amount identified by the Council. Furthermore, if there is a slow rate of sale then this would increase the cost of finance which is also demonstrated in the Council's appraisal, although I note that the appellant has experience of off-plan sales which could help with the rate of sale.

33. This difference in the revenue estimated from the extant scheme would have a bearing on the residualised price as part of the acquisition costs. The appellant estimates higher construction costs than the Council for the houses, but the higher revenue and lower finance cost they also estimate would result in a higher residualised price. This consequentially increases the BLV for the proposed development. However, the Council evidence is such that I would agree that the townhouses are overvalued for the purposes of the viability assessment, which would therefore result in a lower AUV for the proposed development.

Proposed Development

34. Firstly, there is not an agreement on the overall approach for measuring the floor areas of the flats proposed. This has resulted in the Council considering the size of the flats as being different to the appellant, due to a different approach taken. However, as discussed at the Hearing, whilst this is far from ideal any difference would unlikely make a significant difference overall. If the flats were larger then there would be more revenue but also higher build costs, for example.

35. The difference in net saleable area and the dispute between the parties regarding the sales value per square foot is reflected in the difference in the

sales value of the development overall. However, there is a significant difference in construction cost and fees which has contributed to a wide discrepancy between the estimated residual land value of the development.

36. For the 22 flats the appellant has a construction cost of significantly more for the development than the Council's estimate, based on surveyor assessments. I understand that the Council may not have all the intended construction details to make their estimate, but this should not result in a difference in construction costs as substantial as exists between the parties estimates. One of the biggest differences is that of the internal works (part of the fit-out) for example, where the appellant's estimate (provided by Gardiner and Theobold) show much higher estimated costs.

37. It is not clear which estimates are more accurate, as it could be that the developer wishes for a more expensive fit-out for the flats, for example. I also note that for some aspects, such as fitting out the flats, this would likely be significantly more than for houses as there would be more kitchens and bathrooms overall, for example. However, having considered the figures submitted by both parties there is a considerable variation between the costs for constructing the proposed flats. Whilst I do not know what the final costs would be, based on the evidence I am not satisfied that the appellant's estimated costs need to be as high as shown. If the costs could be reduced this would help with viability, even if this would still be more than the Council's estimated costs.

38. There are also differences with the professional fees between the parties, with the appellant stating that 12% of the construction cost is required, whereas the Council explains that 10% would be all that would be needed. I acknowledge that this is not a particularly large scheme and, as discussed at the Hearing, the likely construction methods would not be overly complex.

39. The appellant has not provided a substantive response to this matter, other than to explain that 12% was agreed with the Council's former advisors, for example. I also note that the Council viability document (New Southwark Plan Evidence Base: Housing Policy Viability Update Study) that refers to 10-12% being a reasonable range for professional fees, but this could be one of the developments where 10% would be sufficient.

40. If the professional fees were reduced to 10% then this in itself would reduce overall costs significantly, which could potentially be put towards more on-site affordable housing units than currently proposed.

41. With regards marketing, there is also a dispute between the percentage of sales value needed to adequately market the development, with the Council suggesting 1.5% but the appellant stating the need for 3%. As discussed at the Hearing, this is not a particularly large development which therefore could be marketed relatively locally, rather than internationally for example. Furthermore, being for 22 units the length of time of the marketing period could be shorter time than for larger developments in similar circumstances. Essentially, I am inclined to agree with the Council that a figure of more like 1.5% would be adequate for this scheme. This again would reduce costs and allow more money for affordable housing ultimately.

Appraisal Conclusions

42. Considering all the above, it is clear there are several disputes about the values used in the financial viability appraisals for both the extant and proposed schemes. I am inclined to agree with the Council that based on evidence before me the approved town houses have been overvalued and therefore the benchmark land value derived from the extant scheme (AUV) should be lower than the appellant suggests.

43. Furthermore, I am not convinced that there are costs that could not be significantly reduced with the proposed scheme which would allow for a higher residualised price which, when considering the benchmark value, would result in the potential for more affordable housing than the four AH units currently proposed.

44. As the figures are estimates I cannot be sure at what level affordable housing could be provided, but it has not been satisfactorily demonstrated by the appellant that the maximum reasonable amount of affordable housing is proposed to be incorporated in the development, as required by the London Plan. As proposed, the development would have less affordable housing than would be policy compliant, but I am not satisfied that there is the evidence to show conclusively that this is as a result of a lack of potential viability in the proposed development, taking into account all factors.

Legal Agreement – Viability Test

45. A legal agreement which has been signed and dated has been submitted with this appeal. The legal agreement sets out the provision of four affordable housing units as part of the overall development proposed by the appellant. However, it does include a mechanism for additional on-site affordable housing or an off-site affordable housing contribution if it transpires that a surplus profit, above that estimated by the appellant at this stage, is set to be achieved.

46. There are two triggers for viability tests. The first review date would only be triggered if development has not substantially commenced at a date 24 months after a decision to allow the development, or if the site has been disposed of before this date. If this is triggered and the further development viability information is submitted showing a surplus profit, then this could potentially lead to additional on-site affordable housing.

47. However, this viability review would only be triggered in the aforementioned circumstances and it may never occur. As such, I do not regard this review as sufficient to overcome issues with the level of affordable housing currently proposed (the four units) and whether the developer has adequately demonstrated that further affordable units could be provided.

48. The second viability review trigger would be necessary after disposal of 75% of the market value flats within the development. However, any surplus profit would at this stage be divided between the developer and Council, with what would be left being a potential additional off-site contribution to affordable housing. However, the London Plan (para 3.12) makes clear the preference for on-site affordable housing unless there is an exceptional case made for an off-site provision. It is my view that the developer has not sufficiently demonstrated that further affordable housing cannot be provided on-site.

Therefore, there is not the exceptional circumstance for a reliance on a viability review which would see an off-site contribution.

Planning Balance

49. The site is in an accessible location, near to shops and services. The appellant also points out that this is an attractive place to live. Furthermore, the proposal would provide 13 more dwellings than the extant scheme which would go towards housing supply in the area. This includes the four affordable units proposed.

50. The appellant has highlighted the positives of the design by a reputable architect and how the development would improve the aesthetics of the area by building on what is a vacant and overgrown plot. I also recognise some if the environmental credentials in the development proposed.

51. The appellant has stated their frustration with the delays in the planning application process and also the Council bringing in a new consultant at the appeal stage, which has led to differing conclusions from the previous consultant. However, who the Council have used as a consultant is their decision and I have based my decision on the evidence before me at the time of the Hearing and that submitted soon after. As such, these other issues have not influenced my decision.

52. I have had regard to the Unilateral Undertaking and the contributions that would be made. However, these contributions are necessary due to the potential impacts of the development. As such, other than the affordable housing, these contributions are neutral in my consideration as to the planning balance.

53. Overall, the appellant has not sufficiently demonstrated that the maximum reasonable amount of affordable housing would be provided with the proposed development. The positive benefits of the proposal do not outweigh this lack of provision. Therefore, the proposal is contrary to saved policy 4.4 of the Southwark Plan (2007); Strategic Objective 2C and SP6 of the Core Strategy (2011); and policies 3.9 and 3.12 of the London Plan (2016). These policies seek to provide a suitable level of affordable housing with residential developments, amongst other things.

Conclusion

54. For the reasons set out above, the appeal should be dismissed.

S Rennie

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Pascal Levine –	DS2
Jacqui Andrews -	Howard Sharp and Partners LLP
John Smart	John Smart Architects

FOR THE COUNCIL

Caroline Daly	Francis Taylor Building
Jacob Kut	Avison Young
Alex Cameron	Council Planning Officer
Alex Gillot	Council Lawyer
Alex Godinet	Council Lawyer

INTERESTED PARTY

Valentino Kadirzade	Neighbour to site

ITEMS SUBMITTED AT THE HEARING

- Avison Young – Area Schedule Check
- Avison Young - Cost check on Gardiner & Theobald Cost plans for two schemes
- Avison Young - Variances between the original and latest estimates – 1a Dog Kennel Hill
- Avision Young – Consultants Input Update

ITEMS SUBMITTED AFTER THE HEARING

- Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 – Signed and Dated 2 August 2019
- Statement of Common Ground Addendum - Referring to the submitted Unilateral Undertaking - Received with cover email 2 August 2019.
- An email which included a recommended condition, agreed with by the appellant, from the Council, related to tree protection.