



Appeal Decision

Hearing held on 9 October 2019

Site visit made on 9 October 2019

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 1st November 2019

Appeal Ref: APP/N5660/W/19/3227258

89 Effra Road, London SW2 1DF

- 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 Flutterby Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/04510/FUL, dated 22 October 2018, was refused by notice dated 4 January 2019.
 - The development proposed is the partial refurbishment of existing public house building (Use Class A3/A4) together with the erection of a rear first floor extension, 3 x rear dormers and 1x front dormer window to provide 3 residential units (Use Class C3).
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by the Council of the London Borough of Lambeth against Flutterby Ltd. This application is the subject of a separate Decision.

Procedural Matters

3. I note the very detailed description of the development on the application form. That used in the header above is the more concise description used on both the decision notice and the appeal form.
4. One of the reasons for refusal related to the living conditions of the occupiers of both Nos 87 and 91 Effra Road and referred to sunlight, daylight and outlook. The Council confirmed, both in the Statement of Common Ground and at the hearing, that in the light of the Daylight and Sunlight Report submitted by the appellant at appeal stage they were no longer pursuing the reason for refusal in relation to these matters. Therefore, their concern in this matter now only related to the living conditions of the occupiers of No 87 in respect of outlook. I have determined the appeal on this basis.

Main Issues

5. The main issues in the appeal are:
 - Whether or not the proposal makes adequate provision for affordable housing;

- Whether or not the proposal would provide adequate living conditions for future occupiers with particular regard to external and internal space;
- Whether or not the proposal would preserve or enhance the character or appearance of Brixton Water Lane Conservation Area, the host property, and the setting of the adjacent Listed Building;
- The effect of the proposal on the living conditions of the occupiers of No 87 Effra Road, with particular regard to outlook;
- The effect of the proposal on highway safety; and
- Whether or not the proposal adequately seeks to reduce carbon dioxide emissions.

Reasons

6. The appeal property is a detached villa occupying a long narrow plot. The Council indicates it has been used as a club since early in the twentieth century. A large single storey rear extension that is at a lower level than the main ground floor of the building provides the club with a function room. The upper floors of the premises form ancillary residential accommodation that are currently vacant and in need of refurbishment. It is proposed to extend and convert the upper floors to provide three self-contained flats.

Affordable Housing

7. Policy H2 of the *Lambeth Local Plan (adopted September 2015)* (LLP) requires schemes of less than 10 units to provide a financial contribution towards the delivery of off-site affordable housing in line with the Council's preferred methodology which is set out in Annex 10 of the LLP. The contribution to be paid is subject to viability and a lower payment may be considered acceptable if it is demonstrated that a policy compliant payment would render a scheme unviable. Calculations for small site contributions utilise a "toolkit" which formed part of the evidence considered at the LLP examination.
8. Nevertheless, as highlighted by the appellant, the *National Planning Policy Framework* (the Framework) indicates that the provision of affordable housing should not be sought for residential developments of less than 10 dwellings. As the most recent Framework was published in February 2019, this is a very recent expression of government policy and is a material consideration of significant weight.
9. The Council's evidence sets out the acute need for affordable housing in the area and the importance of small sites in contributing to the provision of such housing. The Strategic Housing Market Assessment 2017 indicates that between 1,047 and 1,573 affordable dwellings are required per annum over the plan period. This shows that the demand for affordable housing will continue to remain high over the next 10-15 years too. The Council's evidence also highlighted a number of recent appeal decisions for small residential schemes where it has been considered that the exceptional local need should outweigh government policy set out in the Framework.
10. Taking into account the evidence before me, I consider that there is a pressing need for affordable housing in the area and that small sites play a key role in ensuring this provision. As such, in this case, I am satisfied that although

considerable weight should be given to the Framework, it does not outweigh development plan policy.

11. At appeal stage the appellant submitted a completed "Small Sites Affordable Housing Contribution Viability Test". Whilst this was revised later in the appeal process both versions submitted by the appellant indicated that the scheme would not be able to make any affordable housing contribution. This was disputed by the Council, who submitted two other viability assessments, one using the appellants initial figures and one using their own. After adding some missing data from the appellant's submissions, in both cases, these showed that the scheme would be capable of making a contribution.
12. At the hearing the figure for professional fees to be utilised was agreed. The appellant also acknowledged that in their revised submission there was an error in that the ground rent was only applied to 1 flat, not all 3. Although there was some slight disagreement over the ground rent figure, the yield of 5% was agreed by both parties. In addition, the Council accepted the demolitions costs put forward by the appellant as they acknowledged that parts of the lower/ ground floor structures would need to be demolished in order to enable the construction of the rear extension.
13. Three areas remained disputed by the parties: the predicted sales value; the existing site value; and the build costs. I accept that the location of the proposed flats above a trading public house makes the development relatively unusual and thus finding exact comparable schemes difficult. Nevertheless, in light of the evidence from the Council looking at a wide range of similar sized accommodation in the area, I consider their figure of £800 per sq ft to be a realistic figure for the potential sales value the scheme could achieve.
14. In addition, given the advice in the RICS guidance¹, as the existing accommodation is ancillary to the ground floor use, with no separate access, I agree with the Council that existing use value of the current accommodation has been over estimated by the appellant.
15. Whilst I accept the appellant's building costs per sq ft is higher than the Council suggest is appropriate for a scheme of this size in Lambeth, I appreciate that the scheme will require quite a significant amount of building works that will not contribute to the actual floor space of the flats. This has the effect of increasing the building costs of the development when considered on a per sq ft basis. As such, I consider that the appellant's figure in this respect is not necessarily unreasonable.
16. Notwithstanding this, in my view the appellant has overestimated the existing use value of the site and underestimated the potential sales value of the development. Given this, I am not satisfied that the Viability Tests they have submitted adequately demonstrate that the scheme would be unable to make an affordable housing contribution.
17. Consequently, I am not satisfied that the scheme makes adequate provision for affordable housing. Therefore, it would be contrary to Policy H2 of the LLP outlined above.

¹ Financial Viability in Planning

Living Conditions – future occupiers

18. Policy 3.5 of *The London Plan (adopted March 2016)* (TLP) sets out the minimum space standards for new dwellings. This indicates that a 1 bedroom, 2 person flat should have a minimum gross internal area of 50 sqm. It is agreed that Flat 1 would fall short of this standard, but whilst the appellant states that it is only 1 sqm short the Council say it is 3 sqm below the requirement. Nevertheless, the floor plans indicate that the flat, which would be dual aspect, would have rooms with adequate circulation space as well as being able to accommodate a range of furniture. Therefore, although slightly under the minimum requirement, it would provide adequate internal space for occupiers.
19. Each first floor flat would be provided with a small balcony of around 3.75 sqm, whilst the second floor flat would have 2 smaller balconies of approximately 1.5 sqm each. These all fall considerably below the 10 sqm of private amenity space required by Policy H5 of the LLP. The accompanying text to the policy indicates that exceptionally, where site constraints make it impossible to provide open space for all dwellings in flatted developments in line with these standards, the provision of additional internal living space equivalent to the amenity space requirement within some of the units may be acceptable.
20. I accept that in this case the constraints of the site and associated with the conversion of the upper floors of the building would make it difficult to provide the necessary outdoor space. However, the amount of internal living space provided does not make any compensation for that. I acknowledge that the existing ancillary accommodation has no outdoor space, and that there is a large park within easy walking distance of the site. However, as the flats only provide around the minimum internal space standard and fall significantly below the external space standard, overall I consider that they would not provide adequate living conditions for future occupiers. As a result, the proposal would be contrary to Policy 3.5 of the TLP and Policy H5 of the LLP outlined above. It would also conflict with Policy Q2 of the LLP which requires adequate outdoor space to be provided.

Character and Appearance

21. The appeal site is located in Brixton Water Lane Conservation Area (CA) and the adjacent property (No 91 - 93) is a Grade II Listed Building. The CA which covers a relatively small area, comprises a landmark public house on the corner of Brixton Water Lane and Effra Road, together with a range of early 19th century suburban villas. These are varied in their design and type, with many having distinctive architectural features, that add to the character and appearance of the area. The adjacent Listed Building is an early nineteenth century 3 storey building. Its significance predominantly lies in its value as an attractive example of domestic architecture from this period and the contribution it makes to the street scene.
22. Although used as a commercial property for many years, the host property still retains the appearance of a domestic villa. Its symmetrical façade and original pattern of fenestration on both the front and rear elevations, means that the building makes a positive contribution to the CA.
23. Although the large function room extension is an unsympathetic addition to the rear elevation, there is limited visibility of it from the public realm. However,

the upper floors of the rear elevation are visible from Morval Road. The proposed extension has a similar design to the 3 storey rear extensions on Nos 85 and 87. However, not only are these properties outside the CA, but the width of these extensions are such that, unlike that proposal, some of the original fenestration on the rear elevations is retained. There is also a rear extension on No 91-3, but this is limited in size, and so much of the rear elevation of this property also remains visible.

24. The scale and mass of the proposed extension is such that it would dominate the rear elevation rather than being a subordinate addition to it. It would also result in the loss of the original pattern of fenestration on this elevation to the detriment of the character and appearance of the CA, and the setting of the adjacent Listed Building. Furthermore, I observed that balconies were not characteristic of buildings in the CA. As a result, the proposed balconies, whose presence would be exacerbated by the necessary privacy screens, would be an incongruous and unsympathetic feature in the CA.
25. At present the front of the property is dominated by the bin store which is encased by solid wooden fencing and located immediately adjacent to the pavement. The proposed alterations to the front forecourt to create separate accesses for the club and the accommodation, would involve alterations to the bin store which has the potential to improve the current arrangements. It would also result in improvements to the front elevation of the building. Whilst these would be beneficial to the character and appearance of the area, I am not satisfied that the appeal scheme is the only way improvements to the existing bin store and the building can be achieved. This limits the weight I give to this.
26. All in all, I consider that the proposal, by way of the rear extension, would not preserve the character and appearance of the Brixton Water Lane Conservation Area or the setting of the adjacent Listed Building. It would also harm the character and appearance of the host property. Accordingly, it would be contrary to Policies Q5, Q8, Q11, Q20 and Q22 of the LLP which seek to ensure developments reflect and reinforce local distinctiveness, are visually attractive, respond positively and are subordinate to the host property, do not harm the setting of Listed Buildings, and preserve and enhance the character and appearance of conservation areas.
27. In terms of paragraph 196 of the Framework, the harm caused to the heritage assets would be less than substantial, and so should be weighed against the public benefits of the proposal. As well as the forecourt improvements mentioned above, the proposal would create 2 additional units of accommodation in an accessible location. However, it was not disputed that the Council can currently demonstrate a 5 year supply of housing land. Whilst I accept that this is a minimum requirement, this reduces the weight to be given to this benefit. Overall, I consider the benefits of the proposal would not outweigh the harm it would cause to the heritage assets.

Living Conditions – occupiers of No 87

28. No 87, which appeared to be in residential use, has windows on all three floors of the main rear elevation of the property that are located close to the common boundary with No 89. The building is also at a slightly lower level than its neighbour. Although the proposed extension would be set back from the boundary slightly, and would not project any further than the extension on No

87, its height would mean it would have an overbearing impact, particularly when viewed from the windows on the lower floors on No 87. Moreover, in combination with the existing extension on No 87, it would create a tunnelling effect and unneighbourly sense of enclosure for these windows and would be detrimental to the outlook from them.

29. Consequently, I consider that the proposal would unacceptably harm the living conditions of the occupiers of No 87 Effra Road with particular regard to outlook. Therefore, it would be contrary to Policy Q2 of the LLP which requires that proposals should ensure that adequate outlook is provided and should avoid an undue sense of enclosure.

Highway Safety

30. The proposal is located within a Controlled Parking Zone. The majority of houses in the area do not have off-road parking, and so the demand for on street parking is high. Policy T7 of the LLP states that in areas where alternative modes of transport are available and public transport accessibility is high, developments should be car-free, including permit free and permit-capped schemes. The appellant indicated that they had no objection to the development being car-free, and the Statement of Common Ground acknowledges that both parties consider that the provision of an appropriately worded Unilateral Undertaking in this respect would be necessary. However, no such Unilateral Undertaking is before me.
31. Notwithstanding the Statement of Common Ground, at the hearing, the appellant suggested that an appropriately worded condition could be used to ensure the development was car-free. An example of such a condition from a recent appeal² elsewhere in London was provided. However, I do not know what evidence was before the Inspector who determined this case.
32. Planning conditions may restrict what an individual can do with land and buildings, or can prevent certain things taking place, until details have been agreed. The appellant's suggested condition requires that the development is not occupied until a scheme ensuring it is car – free has been agreed. It indicates that the scheme should prevent occupiers from having a parking permit.
33. It is not clear what such a scheme would consist of, but I consider it likely that some form of legal agreement would be necessary in order to achieve this. The *Planning Practice Guidance* (PPG) states that the use of negatively worded conditions, requiring a planning obligation to be entered into, should be confined to cases that involve more complex and strategically important development, where there is clear evidence that the delivery of the development would otherwise be at serious risk. These are not circumstances that would apply to this case. Moreover, it is not clear how any scheme would place a restriction on the site rather than an individual. Consequently, the condition suggested by the appellant would fail the test of reasonableness.
34. In order to comply with Policy T7, given the good accessibility of the site, I agree some form of control to ensure the development is car-free is appropriate. In the absence of any mechanism to achieve this, there is no means of ensuring compliance with this policy. As a consequence, the

² Appeal Reference APP/T5150/W/18/3209192

development would increase the demand for on-street parking in the area which has the potential to be detrimental to highway safety.

Reducing Carbon Dioxide Emissions

35. Policy EN4 of the LLP is clear that all development, irrespective of size, should demonstrate in a supporting statement how sustainable design standards are integral to the design, construction and operation of the development. In addition, Policy 5.2 of TLP states that developments should make the fullest contribution to minimising carbon dioxide emissions. Although the appellant has indicated that they would be happy to ensure the development conformed with sustainability principles, no supporting statement demonstrating how such principles have been incorporated into the design or would form part of the construction and operation of the development has been submitted. To ensure that such works are properly integrated into the development, I consider that it is preferable that such matters should not be left to be dealt with by a condition.
36. In the absence of any supporting statement or other evidence as to how the scheme would comply with sustainability principles, I am not satisfied that it would maximise its potential to reduce carbon dioxide emissions. As such, it would be contrary to Policy EN4 of the LLP and Policy 5.2 of TLP outlined above.

Planning Balance and Conclusion

37. As outlined above, the proposed scheme would create two additional units of accommodation and so would make a small contribution to housing supply in the area. It would also improve the appearance of the forecourt to the front of the building. However, for the reasons set out above, the weight I give to these benefits is limited and is not sufficient to outweigh the harm I identified it would cause.
38. For the reasons set out above, I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Anthony Thomas	Antic London
Ian Coward MRTPI	Collins Coward

FOR THE LOCAL PLANNING AUTHORITY:

Magdalena Kotyza BA (Hons) MRTPI	Principal Planning Officer, London Borough of Lambeth
Maylinne Nasa BA (Hons) MA	Planning Officer, London Borough of Lambeth
Amy Tanner BA (Hons), MSc, MRTPI	Planning Policy Officer, London Borough of Lambeth
Jonathan Bernstein MRICS	Avison Young
Adnan Erigat MRICS	Avison Young

DOCUMENTS SUBMITTED AT THE HEARING:

1. Example of a car free housing condition used on an appeal³ submitted by the appellant.

³ Appeal Reference APP/T5150/W/18/3209192