
Appeal Decision

Site visit made on 29 October 2019

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2020

Appeal Ref: APP/N5660/W/19/3234263

54 Kempshott Road, London SW16 5LH

- 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 Gregory against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 19/00753/FUL, dated 28 February 2019, was refused by notice dated 23 May 2019.
 - The development proposed is the conversion of existing HMO (sui generis) into four residential units (2x studio, 1x2-bed, 1x3-bed) Use Class (C3), erection of a single storey ground floor rear and side infill extension; second storey extension on the existing rear return, installation of a door and windows at ground floor side elevation, provision of refuse/cycle storage and associated works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the development would make an appropriate contribution towards the provision of affordable housing;
 - The effect of the development on the living conditions of future occupiers, with particular regard to outlook, internal space, and external amenity space;
 - Whether the development would provide a balanced and appropriate housing mix;
 - The effect of the development on the character and appearance of the appeal building and area; and,
 - Whether the development would result in an unacceptable increase in on-street car parking.

Reasons

Affordable housing

3. The proposal would comprise less than 10 dwellings. Policy H2 of the Lambeth Local Plan 2015 (the Local Plan) sets out that the Council will seek affordable housing on sites providing fewer than 10 residential units by way of a financial contribution towards off-site provision. The Council has submitted evidence to

justify the policy approach of the Local Plan with regards to affordable housing, along with several recent appeal decisions which concluded that affordable housing was required on a range of different sites providing less than 10 dwellings.

4. The submitted evidence identifies a shortage of affordable housing and states that the demand for affordable housing in Lambeth will remain high, as indicated by Lambeth's Strategic Housing Market Assessment 2017. Furthermore, it is evidenced that small sites make a notable contribution to Lambeth's housing supply, in terms of both the number of schemes approved, and those completed. I find the evidence submitted is robust, up-to-date and clearly justifies the Local Plan policy position.
5. The appellant has made me aware of a court judgment¹ which concluded that 'contributions should not be sought from developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1,000 square metres'. This judgment is reflected in paragraph 63 of the National Planning Policy Framework (the Framework) which also states that affordable housing should not be sought for residential developments that are not major developments other than in designated rural areas. However, whilst the Framework is a material consideration and is more up to date than the Local Plan, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise².
6. Therefore, although in the determination of this appeal paragraph 63 of the Framework attracts significant weight, it is not sufficient, in this instance, to outweigh the development plan policy supported by significant evidence. Therefore, an affordable housing contribution would be required in this case.
7. Policy H2 of the Local Plan also states that the Council will take into account development viability and the specific circumstances of individual sites when assessing the requirement for affordable housing. In this instance, no viability appraisal has been submitted, and there is no suggestion that providing an affordable housing contribution in this case would make the development unviable. Therefore, the specific circumstances of this case, including viability, are not sufficient to outweigh the requirement to provide the necessary affordable housing contribution.
8. The appeal is not accompanied by a S106 planning obligation relating to the provision of affordable housing, nor do I consider that this matter could be 'conditioned'. The Planning Practice Guidance³ advises that only in exceptional circumstances should a negatively worded condition requiring a planning obligation or other agreement be entered into before certain development can commence in the case of more complex and strategically important development. I am not satisfied that the level of development proposed could be considered complex or strategically important, and therefore the required contribution would need to be delivered by a legally sound planning obligation.
9. For the foregoing reasons I conclude that the development would not make appropriate provision for affordable housing. It would be contrary to Policy H2

¹ Secretary of State for Communities and Local Government vs West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

² See National Planning Policy Framework paragraph 2

³ Planning Practice Guidance Reference ID: 21a-010-20190723

of the Local Plan which seeks, amongst other matters, a contribution towards affordable housing on sites providing fewer than 10 dwellings, having regard to the specific circumstances of the site.

Living conditions

10. With regards to outlook, Policy Q2(iii) of the Local Plan states that adequate outlooks should be provided avoiding wherever possible any undue sense of enclosure or unacceptable levels of overlooking. The windows proposed to serve the living room within flat 2 would face the side alley of the property, beyond which lies a boundary fence and the built form associated with No 56, both of which are in close proximity. Given this arrangement, obtainable views of the existing fence and/or the adjacent built form from the living space within flat 2 would lead to an unacceptable sense of enclosure for future occupants of this unit.
11. I note that the bedroom associated with flat 1 would also face the side alley, fence and adjacent building. However, as it would be an open plan studio flat, and as additional windows would be provided to the front of the building, I am satisfied that outlook for future occupants of flat 1 would not be unacceptably compromised.
12. Moreover, the side alley would provide access to the rear communal amenity space and cycle store for occupants of the flats within the appeal property. Due to the position of the ground floor side facing windows associated with flat 2, which would sit lower within the building than the windows associated with flat 1, there would be obtainable views into flat 2 for those walking along the side alley. To ensure the privacy of occupants would not be compromised, box planters comprising vegetation screening are proposed which would provide defensible space between the alley and the ground floor side windows of flat 2. However, the planters would be positioned such that they would obscure a large proportion of the windows to prevent outside views into the flat, which would further diminish the obtainable outlook through the windows from within the flat, and significantly reduce the amount of light entering. Consequently, and having regard to the foregoing, the proposal would fail to provide an adequate level of outlook for future occupants.
13. In terms of outdoor space, the submitted plans show communal amenity spaces to the rear, side and front of the appeal property which would total 84m². I am satisfied that both the spaces to the front and rear would receive sufficient natural light and would otherwise accord with Policy H5(c) of the Local Plan so as to be useable areas of communal amenity space. However, the alley to the side of the appeal property is narrow and would be used as an access route to some of the flats and the rear garden area. Therefore, its function as an outdoor amenity space would be severely compromised. Whilst the alley could be used as a seating area, due to its narrowness and the proximity of the appeal building and boundary fencing, the amount of light it would receive would be restricted, and it would offer a poor outlook and standard of amenity for future occupants. To my mind therefore, the side alley space should not be included in the total amount of communal amenity space proposed.
14. Therefore, considering the proposed front and rear amenity space only, the Council calculates that the total communal amenity space would be 56m². This figure is not disputed by the appellant and I have seen nothing in the evidence

before me to question it. Whilst the proposal would include an additional 10m² of private external space to serve flat 2, no other external amenity space is proposed for any of the other flats. Consequently, the proposal fails to adhere to the requirements of Policy H5 of the Local Plan which requires that flatted developments provide at least 50m² of communal amenity space and an additional 10m² per flat.

15. In terms of internal floor space, the proposed change of use would provide a three-bedroom residential unit partially on the ground floor, a two-bedroom unit on the second floor, and two studio flats on the ground floor and first floor. According to the Council's calculations, flat no's 1 – 3 would meet the minimum gross internal floor area (GIA) for new dwellings as set out under Policy 3.5 of the London Plan March 2016 (the London Plan). However, according to the Council, the floor area of flat 4 would be 59.5m², which would be less than the 61m² minimum requirement as stated in the policy. This is disputed by the appellant who states that the second floor GIA associated with flat 4 would exceed 61m².
16. Having regard to both calculations I have been provided with, it seems to me that flat 4 would provide a GIA which would be close to the minimum standards set out in the London Plan. The overarching aim of Policy 3.5 of the London Plan is to ensure housing is designed to be the highest quality both internally and externally. Even if I was minded to accept the calculation provided by the appellant and conclude that the internal floor space proposed was sufficient, I find that the development would conflict with Policy 3.5 of the London Plan as it would not ensure high quality housing internally and externally, for the aforementioned reasons.
17. In conclusion therefore, the development would not provide acceptable living conditions for future occupiers, with particular regard to outlook and external space. Accordingly, the development would conflict with Policies H5 and Q2 of the Local Plan and London Plan Policy 3.5 which require, amongst other things, that development adheres to defined standards in terms of external space, and avoids an undue sense of enclosure and overlooking. Furthermore, the development would conflict with paragraph 127 of the Framework which requires that a high standard of amenity is provided for existing and future occupiers.

Housing mix

18. The appeal property is currently used as a house in multiple occupation (HMO). Policy H9(b) of the Local Plan states that the loss of HMOs will be resisted unless either (i) the accommodation is no longer needed and the new accommodation will instead meet another identified priority local need (ii) the property is incapable of meeting modern standards, or (iii) the existing accommodation will be adequately re-provided to an equivalent or better standard on-site or elsewhere in the borough.
19. The appellant states that the appeal property is below modern standards and suffers from mould, dampness and a range of other deficiencies. Having viewed the appeal property internally, I agree that this represents an accurate summary of the building. I have no doubt that the appeal property in its current state fails to provide a high standard of accommodation, thus undermining its role in contributing to a quality stock of HMOs in Lambeth. This is reflected in the evidence I have been provided with which shows that

the letting of rooms within the appeal property has been intermittent despite rooms being marketed over a sustained period. Therefore, even though there is no detailed financial or viability information before me to suggest that the property could not be refurbished and brought up to modern standards and continue to be used as a HMO, neither have I been provided with any evidence by the Council to demonstrate a shortage in the supply of HMOs in the area. Having regard to this, it has not been demonstrated to my satisfaction that there is sufficient demand in the area to make the refurbishment of the HMO viable. When combined with the deficiencies in terms of the accommodation quality of the appeal property, this leads me to conclude that it is incapable of meeting modern standards

20. Whilst I accept that the existing accommodation would not be adequately re-provided to an equivalent or better standard elsewhere in the borough contrary to Policy H9(b)(iii) of the Local Plan, I find that the proposal would be compliant with H9(b)(ii).
21. Therefore, I am satisfied that the development would provide a balanced and appropriate housing mix. The proposal would provide an alternative accommodation type of higher quality than the current HMO. It would meet the requirements of Policy H9(b)(ii) of the Local Plan as the use of the appeal property as a HMO would be incapable of meeting modern standards.

Character and appearance

22. The proposed extensions to the rear would introduce a second-floor extension over the existing outrigger, whilst extending the existing rear return at first-floor level by approximately 1m. A 'wrap around' ground floor extension is also proposed which would extend further to the rear than the extensions proposed on the upper floors.
23. Despite the relatively extensive nature of the alterations proposed, I am satisfied that the architectural integrity of the rear outrigger and appeal dwelling would not be diminished. The extensions would ensure that the linear form and overall width of the outrigger was retained, and the proposed second floor addition, whilst increasing the overall height and mass of the outrigger, would have a matching mono-pitched roof, be set back from the rear face of the outrigger at first floor, and have an overall height well below the ridge height of the main building.
24. Furthermore, the extensions would be discretely positioned and would be difficult to see from outside the site other than the immediate neighbouring properties. Other than along a short stretch of Buckleigh Road, the proposal would not be visible from the street. In any event, the appeal dwelling lies adjoining No. 52, which has a rear elevation with a contrasting design, thus when viewed from Buckleigh Road the proposal would not appear at odds with the adjoining property, nor would it be obtrusive in the street. Accordingly, these considerations lead me to the view that the proposal would be a subservient addition which would not be incongruous and would not harm the character and appearance of the area.
25. In conclusion, the development would not harm the character and appearance of the building or the area. It would comply with Policies Q5, Q8 and Q11 of the Local Plan which seek, *inter alia*, to ensure that developments maintain local distinctiveness and are attractive, are subservient to their host buildings

and do not harm the architectural integrity of buildings close by. Furthermore, I find no conflict with the Council's Building Alterations and Extensions Supplementary Planning Document 2015 (SPD) as, even though the proposal would involve an alteration to a rear return, I find that the appeal site does not fall within a group of dwellings where there is uniformity, thus there is no conflict with the SPD in this respect.

Parking

26. The Council are concerned that the development would not be 'car free', as there is no S106 planning obligation restricting on-street car permits for future occupants of the appeal property. However, the street is not within a controlled parking zone (CPZ), and whilst it is put to me that a planning obligation is necessary in the event that a CPZ is imposed in future, I have no information before me to suggest that a CPZ is planned, let alone imminent. The proposal does not include any car parking provision.
27. Policy T7 of the Local Plan requires new development to be car free. In this case, no parking is proposed and as the site lies within a Public Transport Accessibility Level (PTAL) area with a score of 4, indicating a good level of accessibility to public transport, there would be alternatives available to using the private car.
28. Whilst my site visit was conducted during the daytime, and I anticipate that on-street parking is much more prevalent during the evenings and overnight, I saw several on-street car parking spaces close to the appeal site on my site visit. Furthermore, the Council have not provided me with any evidence to suggest that the surrounding streets are under significant parking stress. Therefore, I am not persuaded that the likely number of additional cars on nearby streets arising from the development would result in significant parking stress, or affect the free flow of traffic.
29. Policy T7 also states that in areas such as this where there are no on-street parking controls, developers will be expected to provide, or contribute towards, measures that prevent an unacceptable increase in on-street parking and also towards measures to promote sustainable travel. Policy T7(a)(iii) also requires that all new developments promote and provide for car club membership for future occupants. However, this requirement would stem from a position where the parking demands of the development could not be met on streets nearby, and I am not persuaded that this is the case here. As such, a planning obligation requiring a car club membership is not necessary to make the development acceptable.
30. As Kempshott Road is not within a CPZ and given the evidence before me, along with the observations I made on my site visit, the development would not unacceptably compromise highway safety in the area and there would be no requirement to provide off-street parking or restrict on-street parking in the future. The appeal site is located such that it provides access to good transport links.
31. Consequently, I am satisfied that the development would not result in unacceptable levels of on-street parking. The development would comply with Policies T1, T6 and T7 of the Local Plan and Policy 6.13 of the London Plan which aim to promote sustainable travel and control and manage the

availability of car parking. As such, a planning obligation is not required in this case, thus Policy D4 of the Local Plan is not compromised.

Other Matters

32. The proposal would make a more efficient use of the land and provide good quality homes in the area. It is a small site which the Framework recognises is important in contributing to the local housing market and the Council's housing targets. The proposal would result in four new homes with a mix of unit sizes which could be brought to market quickly. I recognise that these factors constitute significant benefits, but they do not outweigh the harm and conflict with the development plan I have identified.

Conclusion

33. Although I have not found any harm to character and appearance, and find that the proposal would ensure acceptable car parking was available, and ensure an appropriate mix of housing, the proposal would unacceptably harm the living conditions of future occupiers and would fail to provide an appropriate affordable housing contribution, contrary to the development plan and the Framework. The appeal is therefore dismissed.

Matthew Woodward

INSPECTOR