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# Appeal Decision

Site visit made on 7 January 2021

**by Mrs H Nicholls FdA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 January 2021**

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## **Appeal A Ref: APP/N5660/W/20/3258791**

### **19 Streatham Common North, London SW16 3HJ**

- 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 Formative Group Ltd against the decision of the Council of the London Borough of Lambeth.
- The application Ref 20/01195/FUL, dated 1 April 2020, was refused by notice dated 16 July 2020.
- The development proposed is erection of a single storey garden outbuilding.

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## **Appeal B Ref: APP/N5660/W/20/3251920**

### **19 Streatham Common North, London SW16 3HJ**

- 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 Formative Group Ltd against the decision of the Council of the London Borough of Lambeth.
  - The application Ref 19/03354/FUL, dated 11 September 2019, was refused by notice dated 5 November 2019.
  - The development proposed is erection of a single storey detached dwelling house.
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## **Decision**

1. Appeal A is dismissed.
2. Appeal B is dismissed.

## **Preliminary Matter**

3. As part of the Appeal A, revised plans were submitted with the appeal showing the garden building reduced in scale and height and with altered access arrangements. As part of Appeal B, amended and additional plans were provided in respect of the access arrangements and foundation design respectively. Where amendments are proposed, regard should be had to the 'Wheatcroft'<sup>1</sup> principles - including whether the amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity. As the plan details relatively modest amendments, and the nature of concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I take the amended plans into account. I shall therefore determine the appeals on the basis of the plans referred to on the decision notices as well as the amended plans submitted as part of the appeals.

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1. Wheatcroft Ltd V SSE [1982]

## Main Issue

4. In respect of Appeal A, the issues are the effects on the character and appearance of the area and whether the proposal would preserve or enhance the character or appearance of Streatham Common Conservation Area (CA).
5. In respect of Appeal B, the main issues are:
  - whether the proposal would make an adequate contribution towards affordable housing;
  - whether the proposal would provide an adequate living environment for future occupiers;
  - the proposal's effects on the area's character and appearance and whether it would preserve or enhance the CA;
  - whether the proposal would provide adequate measures towards sustainable transport and avoid placing pressure on street parking; and
  - whether the proposal would achieve a satisfactory relationship with the existing protected trees.
6. Common to both appeals is whether the proposals would preserve or enhance the character or appearance of the CA. Under Section 72(1) I am required to pay special regard to the desirability of preserving or enhancing the character or appearance of the CA.

## Reasons

### *Appeal A – character, appearance and CA effects*

7. The appeal site is formed from a part of the rear garden of 19 Streatham Common North, which is a four storey semi-detached 19th century building immediately north of Streatham Common. The garden has been subdivided into three sections by wooden fencing of around 2 metres in height, with the appeal site being the furthest from the building itself. The site is approximately 108 square metres, much of which is beneath the canopies of a number of mature trees.
8. From the evidence, including the Streatham Common Conservation Area Character Appraisal (2017) (CAA), the CA derives its special qualities from the eclectic mix of housing that surrounds the expansive and historic Streatham Common, that stems from its piecemeal development between the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Therefore whilst the principal factors that define the significance of the CAA are the Common and the eclecticism of the buildings that surround it, the other spaces surrounding them can also contribute positively.
9. Image 1 of the appellant's Statement of Case amply illustrates the findings in the CAA that the area's "*semi-rural character ...is supplemented by the rear gardens which collectively are of amenity and habitat value and provide a soft landscaped setting to the buildings. They contribute positively to the spatial character of the area*". The site's tree coverage and its siting within a line of back-to-back gardens makes it part of the collective amenity and habitat value, providing the necessary spaciousness and soft aesthetic quality that helps define it. Whilst the CAA focusses on the frontage spaces and does not identify

‘backland development’ as being a particular threat to the special character of the CA, it is clear that the introduction of a building in an area otherwise generally free of substantial buildings is likely to jar with the existing urban form and undermine its contribution to the area’s character and appearance.

10. The appeal proposal would introduce a substantial building of broadly rectangular plan form within the fence-bound garden space. Whilst there are garden sheds at the end of nearby gardens, none are as large, so dominantly sited to occupy the central garden space or so solidly constructed as the proposed building is intended to be. Even with the reduction in size and height that may mean that visibility above the fence line would be minimal, the building would appear to overwhelm the space, and leave little useable garden area for recreation or practical purposes.
11. The appellant advances that the proposal would comply with Lambeth Local Plan<sup>2</sup> (LPP) Policy Q14 (c)(i) because it would retain at least 70% of the original garden, however, the subdivided area of garden into which the building is sited is clearly distinct from the other parts and its area is approximately 108 sqm. Even with the reduced footprint, the building would still exceed the 30% maximum area stipulated by the Policy. However, owing to its siting in order to avoid adverse effects on trees, the remaining space would be of limited use. As such, the quantitative compliance, were it achieved, would still not result in the achievements of the objective of the Policy to maintain a useable garden space.
12. In respect of the contemporary form and design of the building with timber walls and sedum roof, I do not consider that this would be so incongruous in respect of a garden storage building that it would specifically harm the character and appearance of the area or significance of the CA. However, the substantial qualities of its construction combined with its large scale and dominant position would appear to exceed its intended purpose as a storage building and undermine the legibility of the urban form.
13. In view of this main issue, the proposal would be harmful to the character and appearance of the area and would also fail to preserve or enhance the character and appearance of the CA. It would therefore conflict with LLP Policies Q5, Q7, Q14 and Q22. These Policies, amongst other things, collectively seek to preserve or enhance the character or appearance of conservation areas, secure design that responds to positive aspects of the local context and historic character and also seek to ensure that development in rear gardens retains a significant proportion of the existing garden.
14. In terms of the National Planning Policy Framework (the Framework), the proposal would harm the significance of a designated heritage asset but the harm would be ‘less than substantial’. Under paragraph 196 of the Framework, such harm should be balanced against the public benefits of the proposal. The provision of an enclosed building to provide storage or alternative ‘ancillary’ domestic space could be of benefit to the households that would have access thereto, however, this would be at the expense of the usability of the garden area on which it would be positioned. Aside a potential minor economic input from the construction of the building, there is nothing compelling or publicly beneficial about the proposal that would outweigh the harm.

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<sup>2</sup> Lambeth Local Plan (2015)

## **Appeal A - Other Matters**

15. The appellant indicates that the building would be sited on an underused part of the communal garden, which by reason of its form, layout and materiality, offers very little amenity value. Whilst this may be so at the present time, there is little evidence to suggest that the space could not be improved in any other way that would promote an increase in its attractiveness and use.

## **Appeal B – Reasons**

### *Appeal B – Affordable housing*

16. London Plan<sup>3</sup> Policy 3.13 and LLP Policy H2 seek the provision of affordable housing to address housing need. LLP Policy H2 (a)(ii) refers to sites providing fewer than 10 units generating a financial contribution towards the delivery of off-site affordable housing using the Council's preferred methodology.
17. An updated financial viability assessment was submitted with the appeal using the Council's own viability test methodology<sup>4</sup>. Whilst many stated factors that contribute to the increased build costs also indicate that the site is not ideally suited to the development proposed, the outcome of the calculation is that no affordable housing contribution could be achieved.
18. Neither parties' case appears to fully justify all of the input assumptions and there is obviously a difference between the resulting payments in lieu, or lack thereof. A matter not discussed in the evidence is the land value and whether one should be deducted for the site. There is also some uncertainty about whether the predicted gross development value is based on a freehold sale of the development on the 108 sqm plot, or whether there would be a relationship with the remainder of the garden of the host building, as is discussed elsewhere in the evidence.
19. Based on the absence of clear evidence to the contrary, I am unable to conclude that the proposal is delivering the maximum achievable affordable housing contribution. Consequently, the proposal conflicts with Policies 3.13 of the London Plan and Policy H2 of the LLP which, on sites of fewer than ten dwellings, seek a financial contribution towards the delivery of off-site affordable housing.

### *Appeal B – Living environment for future occupiers*

20. The proposed dwelling would have a single bedroom and a combined living room/kitchen/dining room with a total gross internal floor area of 50 sqm. In quantitative terms, this would achieve compliance with the National Space Standards<sup>5</sup>. In qualitative terms, the outlook of the property would be towards the existing high timber fence boundaries at very close range. This would provide a very poor outlook. In addition, the shading from the existing mature trees overhead would also reduce the ingress of light into the windows, also resulting in further oppressive qualities to the living environment. My findings in this regard are based on the absence of any BRE-compliant<sup>6</sup> daylight and sunlight report.

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<sup>3</sup> London Plan (2016)

<sup>4</sup> Small Sites Affordable Housing Contribution Viability Test

<sup>5</sup> Technical housing standards – nationally described space standard (Communities and Local Govt) (2015)

<sup>6</sup> Building Research Establishment (BRE) guidelines

21. The manner in which the property would be accessed is also a factor in its suitability for occupation. The appeal site is situated at the far end garden plot which is accessed between two buildings and the length of much of their gardens. There is a narrow path, between two fences that run a substantial length, currently unsurfaced, which would be expected to provide suitable access. Notwithstanding the potential effects of such on neighbouring occupiers, the introduction of a coded security gate, lighting and CCTV could achieve some improvement in the safety of users of the space, but this would still not make it satisfactory as an arrival point for occupiers of a dwelling. Aside its unattractiveness, there would also be many practical drawbacks of having to negate such a long length of narrow path.
22. There is a degree of conflicting evidence about the amount of amenity space that would be provided to serve the dwelling itself, and whether that should be deducted from that which would remain for the host dwelling or maintained as part thereof. As the plans indicate, the existing fenced boundaries would remain, leaving a narrow strip around the perimeter of the building as amenity space. Whilst in quantitative terms that may be counted as 55 sqm, it would appear that this figure has been overstated and that the calculation should relate to a space that could be considered usable. The largest pocket of space would be to the rear of the dwelling, deliberately dictated by the need to minimise the impact on the existing mature trees. However, its relationship with such indicates that this space would be dominated by the overhead canopies, their shading effect and leaf litter.
23. For the numerous reasons stated above, the proposal would fail to provide an adequate living environment for future occupiers, contrary to LLP Policies H5, Q2 and Q7, which, amongst other things, seek to ensure new residential developments accord with the principles of good design; provide adequate outlooks, avoiding any undue sense of enclosure; provide adequate outdoor amenity space free from oppressive enclosure and overshadowing; and includes well-considered entrances in street and other public frontages, so that all entrances are attractive, safe and legible. For similar reasons the proposal would also conflict with Policy 3.5 of the London Plan which seeks to ensure that housing developments are of the highest quality internally, externally and in relation to their context and to the wider environment.

*Appeal B – Character, appearance and CA effects*

24. The dwelling proposed under Appeal B is larger than the garden building proposed under Appeal A, having accepted the revised plans in respect of the latter. However, it would essentially share a very similar form, design, siting and appearance.
25. For similar reasons expressed in relation to Appeal A, the proposal would be harmful to the character and appearance of the area and would fail to at least preserve the character or appearance of the CA, thus harming its significance. These effects would be exacerbated owing to its larger scale, inappropriate use of materials for a new dwelling, the greater degree of incongruity arising from the introduction of a dwelling into a garden set amongst a swathe of other such gardens providing a collective green amenity value, and also from the additional changes that would also be necessary in relation to lighting and CCTV columns.

26. Consequently, the proposal would harm the character and appearance of the area and would also fail to preserve the character or appearance of the CA. Appeal B would therefore also conflict with LLP Policies Q5, Q7, Q14 and Q22.
27. Under the Framework, despite being a greater level of harm than would result from Appeal A, the harm to the significance of the heritage asset would still be of a 'less than substantial' magnitude. In this case, the public benefits include the provision of a new dwelling, along with the potential increased economic benefits from the construction phase and subsequent occupation by occupiers reliant on local shops and services. Considered in the round, the weight to be attributed to these minor public benefits are still not sufficient to outweigh the less than substantial harm to the significance of the heritage asset.

*Appeal B – Car parking and sustainable transport*

28. The existing car parking to the front of No 19 Streatham Common North is used by the existing residents and it does not appear capable of accommodating further spaces. Streatham Common North is not currently within a Controlled Parking Zone (CPZ) but it is a classified Local Distributor Road and does not lend itself to on-street parking in the vicinity of the appeal site. CPZs do not apply to the immediately adjoining streets either. There is, however, a suggestion that the Council may seek to impose a CPZ in the future. In relation to public transport accessibility, the site scores a rating of 5 against the PTAL<sup>7</sup> measurement, which indicates that it is 'very good'.
29. Policy T7 of the Local Plan requires that development shall be car-free, including permit-free and permit-capped schemes in areas where public transport accessibility is high. It also requires car club membership for all residents in new residential development and mixed-use development.
30. The appellant has provided a parking survey with the appeal evidence. This appears to pre-date the Covid-19 Pandemic which may have altered the pattern of demand for parking. The outcome of the survey suggests that there is sufficient availability of parking to meet the needs of an additional dwelling with 25 – 26 available spaces reportedly readily available at most times.
31. The current lack of a CPZ, considered in combination with the parking survey results, suggest that the proposal would not be so prejudicial to highway safety or efficiency that it is necessary to seek a S106 obligation to make the development car-free in anticipation of a future CPZ.
32. In respect of the promotion of sustainable travel, the PTAL rating of the area suggests a reduced reliance on vehicle by local residents. However, the proposal would include cycle parking secured by way of planning condition. Whilst there would be a minor conflict with LLP Policy T7 in relation to the provision of a car-club membership, as the matter is failing for other reasons, this is not a decisive factor.
33. Consequently, the proposal would not cause a material and significant increase in the demand for car parking to the extent that highway safety or efficiency would be compromised, nor would it represent a material failure to promote sustainable methods of travel. The proposal would therefore comply with LLP Policies T1 and T6. Amongst other things, these policies seek to minimise

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<sup>7</sup> Public Transport Access Level

parking demand, promote a sustainable pattern of development and secure car-free development where public transport accessibility is high.

*Appeal B – Effects on protected trees*

34. The Council's reason for refusal concerning the effect of Appeal B on protected trees relates to both the construction impact on the trees and the long-term relationship between the trees and future occupiers.
35. In relation to this first aspect, the appeal evidence included an 'Implications Assessment and Preliminary Method Statement' (Method Statement). This suggests that, utilising the 'Helifix Dixie screw pile system' and other measures which effectively minimise the need for excavation and consequent root damage, the trees would be protected during construction works. These conclusions were also reached in relation to the longer-term effects of soil compaction which the affected trees are allegedly capable of withstanding more readily than more vulnerable species.
36. In respect of the second aspect, the Method Statement goes on to suggest that the relationship between the trees and the development would be acceptable because the "... *revised scheme is for an ancillary garden outbuilding, rather than a residential dwelling*". Whilst the Council has not included a reason for refusal specifically in respect of the effects on the trees from the garden building, the inference in the Method Statement is that the longevity of the trees would indeed be threatened by future occupiers that resided in the building as a dwelling, owing to issues such as excess shading, dropping of leaves and the mere size of trees that can cause concern.
37. Whilst the Method Statement suggests that some light pruning works should be undertaken in order to avoid construction phase damage and to create a reasonable separation between tree canopies and the structure itself, these aspects are not so concerning as the likelihood that future residents would be so affected by the direct relationship with the trees in the ways described above. Whilst the trees would continue to be protected by way of the area's conservation area designation, the effects on the enjoyment of the dwelling and garden would not be capable of being addressed.
38. Drawing together this issue, and considered in the round, even if the construction phase impacts were capable of being satisfactorily mitigated, the proposal for a dwelling would not achieve a satisfactory relationship with the existing protected trees, contrary to, in particular, LLP Policy Q10. This Policy seeks to ensure that retained trees are positively integrated, on a sustainable basis, as part of site layouts in new development.

**Appeal B - Other Matters**

39. The Council's decision notice raised a concern in respect of the harm to the amenities of neighbouring and future occupiers from noise and disturbance owing to the siting of the proposal in an area surrounded by gardens, and the comings and goings from residents. Given the almost exclusively residential use of the immediate surroundings, the proposal for a modest residential development is unlikely to give rise to a level or type of noise or disturbance that would be materially harmful in this context.
40. Neither of the parties have referred to policies from the emerging London Plan ('the eLP') in respect of either appeal. Whilst the eLP is not yet adopted, a

further Examiner's Report has been issued on the matter since the appeals were made. This concludes that, with the recommended main modifications, the eLP satisfies the necessary requirements and meets the criteria for soundness. Whilst given its advanced stage of preparation, the eLP could attract moderate weight (in accordance with paragraph 48 of the Framework), no specific issues or inconsistencies between the relevant policies have been raised that would have altered the outcome of the appeals in any event.

### **Appeal B - Planning balance**

41. As identified above, Appeal B gives rise to numerous conflicts with the development plan.
42. The benefits of the scheme include the delivery of a small dwelling in an accessible location, along with construction phase economic benefits and longer-term economic benefits to the area from future residents. Due to the scale of the scheme, these benefits would be modest.
43. There would be no direct loss of privacy for neighbouring or future residents. The absence of this harm, and acceptable effects in relation to the absence of car parking only attract neutral weight in the overall balance.
44. The weight of the above considerations and benefits taken together do not indicate that a decision should be taken other than in accordance with the development plan.

### **Final conclusions – Appeals A and B**

45. Appeal A conflicts with the development plan and there are no considerations of sufficient materiality to indicate that a decision should be taken other than in accordance therewith. Consequently, Appeal A is dismissed.
46. For the reasons expressed above, and taking into account all other matters raised, Appeal B is also dismissed.

*Hollie Nicholls*

INSPECTOR