



Appeal Decision

Site visit made on 5 January 2021

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th January 2021

Appeal Ref: APP/N5660/W/20/3259238

37 Hainthorpe Road, London SE27 0PL

- 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 M Betts (Briarpath Properties Ltd) against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 19/04189/FUL, dated 7 November 2019, was refused by notice dated 17 March 2020.
 - The development proposed is demolition of detached No 37 Hainthorpe Road and semi detached No 1 Dodbrooke road and construction of a new apartment block consisting of 8 No new units and a 5 bed single dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The applicant submitted alternate layout drawings to the Council before the planning application was determined. However, the drawings were not taken into account when the Council made its decision. It is important that the proposal that I consider is essentially that which has been considered by the Council and on which interested parties' views have been sought. To do otherwise would be prejudicial to the positions of the Council and interested parties. The drawings include significant changes to the proposal and I cannot be sure that they have been considered by all interested parties given that the Council did not undertake consultation on receipt of them. I have not taken the drawings into account as a result.
3. The appellant has submitted a flood risk statement and viability information with the appeal in an attempt to overcome some of the Council's reasons for refusal. The Council has been able to consider this evidence as part of the appeal process. I have taken it into account in making a decision.

Main Issues

4. The main issues are: (i) whether the proposal would provide an appropriate standard of accommodation for future occupiers; (ii) the effect of the proposal on the character and appearance of the area; (iii) whether the proposal would be satisfactory in respect of potential flood risks; (iv) the effect of the proposal on parking in the area; and (v) whether the proposal would, if necessary, make an appropriate contribution towards the provision of affordable housing.

Reasons

Standard of accommodation

5. The site includes the buildings and gardens at 37 Hainthorpe Road and 1 Dodbrooke Road. No 37 features a detached building which includes 2 apartments. No 1 is an end of terrace building that also comprises 2 apartments. The area is characterised predominantly by semi-detached and terrace period properties; however, more recent development is located opposite the site at Hainthorpe Estate.
6. The proposal seeks to demolish the existing buildings in order to provide a house and 8 flats. There would be 2 flats at lower ground level, which are shown on the drawings as Apartments 1 and 2.
7. Apartment 2 would have 3 bedrooms and thus it could be occupied by a family. It would feature a living, dining and kitchen area that would constitute a significant proportion of the flat, serve multiple functions for daily living and likely act as the primary space for its occupiers. It would be served by glazed doors that would be situated beneath a balcony and face towards and be close to a staircase within a lightwell that would provide access to the street. The only other opening serving that area would be a small window in the corner facing a lightwell to the rear. Consequently, it would feel enclosed and lack adequate levels of outlook and daylight.
8. The bedrooms and the snug would be adequate in terms of outlook and daylight given the typical purposes of such rooms, but this would not compensate for the issues identified. I recognise that the existing buildings include basements and much residential development below ground level will by its very nature often have restricted outlook and receive limited amounts of daylight. However, even in that context, the living conditions of Apartment 2 would not be acceptable.
9. The living, dining and kitchen area for Apartment 1 would be served by several windows and a wide lightwell in front of it. The proposed house would feature a snug and dining area at lower ground level which would not be served by windows; however, it would gain sufficient daylight via a rooflight, and several other spaces, such as the living room, television room and kitchen, would benefit from windows that would provide for adequate daylight and outlook. The window arrangements for the flats above ground level would also be appropriate. These particular elements of the development would provide adequate living conditions.
10. Policy H5 of the Lambeth Local Plan (LP) requires new flatted developments to include at least 50m² of communal amenity space and an additional 10m² of external amenity space per flat, either as a balcony, terrace or private garden, or consolidated with the communal space. The house would benefit from adequate amenity space. Apartments 1 and 2 would do so too, albeit there would be some overlooking of the lightwells from passers-by at street level and from the windows and Juliet balconies serving the flats above them. However, 6 of the flats would have balconies less than 10m². Furthermore, 4 of those would be 3-bedroom flats with balconies less than half that size. A roof terrace would provide communal space which is 53m², but this would not fully compensate for the shortfall in amenity space per flat.

11. The Housing Supplementary Planning Guidance (SPG) advises that 5m² of amenity space is appropriate for 1-2 person dwellings and an extra 1m² should be provided for each additional occupant. However, the Housing SPG is guidance and LP Policy H5 sets out higher local standards that are development plan requirements. The supporting text to the policy explains that, in exceptional circumstances, where site constraints make it impossible to provide private open space for all flats in line with the requirements, the provision of additional internal living space equivalent to the amenity space requirement within a proportion of dwellings may be accepted. A similar approach is promoted by the Housing SPG.
12. I acknowledge that 4 of the flats would each have a gross internal area notably larger than their amenity space deficit and there is nearby public open space at Devane Way. In addition, the appellant puts forward that 2 of the existing apartments have no amenity space and the proposal would improve on the amenity provision for residential development that was granted permission in 2018¹ at No 37, which followed a dismissed appeal² for development at the site. The previous scheme is not directly comparable with the one before me as the designs and the number and size of the proposed residential units differ but, in any case, the matters identified do not reach the high bar of exceptional circumstances. Moreover, it has not been demonstrated that the site constraints make it impossible to provide amenity space in line with the requirements of LP Policy H5.
13. The proposal would fail to provide an appropriate standard of accommodation for the future occupiers of the development. It is contrary to LP Policy Q2 and H5, which seek to ensure that housing provides adequate levels of amenity and has an appropriate amount of outdoor space. However, there is no conflict with LP Policy H6 as it relates to residential conversions.

Character and appearance

14. The Council's concerns in respect of this main issue relate to the development below ground level, which would be significantly greater in extent than would be the case for the approved scheme. However, the size of the lightwell for Apartment 1 would be similar to the one that has been approved. The below ground accommodation at No 37 is visible over the fence and examples of lightwells are apparent in the locality. Furthermore, as the site is located on a corner at the end of both Hainthorpe Road and Dodbrooke Road, the development would not disrupt the continuity or rhythm in the built form within the streetscene at ground floor level and above. Having regard to these matters, and taking into account that the development would generally be viewed as a whole from street level, I do not consider that the below ground elements would appear incongruous.
15. The proposed dwarf wall and railings at street level would provide a degree of screening to the lightwells and be compatible with the varied materials and designs of the front boundary treatments of the existing properties in the area. The proposal would provide continuous built form along Hainthorpe Road, which would be compatible with the limited gaps that are present between the existing residential properties. The loss of the garden to No 37 would thus not have a harmful effect on the locality.

¹ Council reference: 18/02489/FUL

² Appeal reference: APP/N5660/W/17/3177705

16. The proposal would not harm the character and appearance of the area. In respect of this main issue, the proposal accords with LP Policies Q2, Q5 and Q7, which seek to protect visual amenity and reinforce local distinctiveness.

Flood risk

17. The site is located within Flood Zone 1. It is not within a Critical Drainage Area. However, it is identified as being in an area which is susceptible to flooding from ground and surface water.
18. The below ground accommodation at Nos 1 and 37 includes no flood mitigation measures. Firm evidence of historic flooding at the site has not been provided. The approved scheme includes a basement for the house. It also includes a lower ground floor flat in a similar location to proposed Apartment 2; however, it does not include any means of internal access to the upper floors. In comparison with the approved scheme, an additional flat is proposed at lower ground level.
19. The appellant's Flood Risk Assessment (FRA) sets out that the proposed lower ground floor flats and the house could be tanked and resilience measures and water entry and exclusion strategies could be adopted to manage flood risk. The Lead Local Flood Authority indicates that the threshold levels for the house would be acceptable if they are as suggested by the appellant. I do not have compelling evidence which indicates that the proposed threshold levels would not be achieved and thus the development is acceptable in this respect. I also have no reason to find that the proposal would not retain the lower ground floor datum level of No 37. In addition, the house and the flats would include internal accesses to ground floor level which would offer improved safety in the event of flooding in comparison with the approved lower ground floor flat.
20. On balance, having regard to the existing site's characteristics and the approach for the approved scheme, the mitigation strategies within the FRA would be a proportionate response to the level of flood risk. Conditions requiring the approval of detailed schemes of flood protection, sustainable drainage systems and structural stability would ensure that the development would adequately address matters of flood risk and drainage.
21. The proposed development would be satisfactory in respect of potential flood risks. It accords with LP Policy EN5, which requires that development is safe from all forms of flooding and does not increase flood risk.

Parking

22. The site is located within a Public Transport Accessibility Level (PTAL) area with a rating of 4, which indicates that it benefits from a good level of accessibility to public transport. It is not located within a Controlled Parking Zone (CPZ) and the Council has not indicated that one is likely to be introduced in the future.
23. LP Policy T7 states that development should be car-free and car club membership should be provided for the residents. Its supporting text advises that where there are no on-street parking controls, it should be demonstrated that development would not lead to an unacceptable increase in the level of on-street parking. The supporting text also seeks the provision of, or contributions towards, measures that prevent unacceptable increases in on-street parking and promote sustainable travel.

24. The appellant provided a parking survey with the application which indicates that there is capacity for on-street parking within the area. The methodology and findings of the survey have not been disputed by the Council. Substantive evidence has not been advanced which counters the findings of the survey. Moreover, the site's PTAL rating indicates that the future occupiers would likely be able to rely on alternatives to private motor vehicles.
25. I am satisfied that additional vehicles arising from the development would not result in significant parking stress in the area. In this context, measures to exclude the occupiers from the Council's permit parking scheme and provide car club memberships are not necessary in order to make the development acceptable. Planning obligations to secure such measures would thus not satisfy the requirements of the tests set out at Regulation 122 of the CIL Regulations³ and paragraph 56 of the National Planning Policy Framework.
26. The Council indicates that a contribution towards the provision of an on-street disabled parking bay is also required. However, given my findings above and as no mobility units are proposed, I also find that this would not be necessary.
27. The proposal would be acceptable in respect of its effects on parking in the area. It accords with LP Policies T6 and T7, which seek to promote sustainable travel and manage the availability of parking in the borough.

Affordable housing

28. Policy H2 of the LP sets out that financial contributions will be sought towards the delivery of off-site affordable housing where proposals are for less than 10 units. It also allows for financial appraisals to be submitted if it is advanced that contributions cannot be provided.
29. The application was supported by information indicating that the proposal would not be able to viably contribute towards affordable housing. However, the Council contests the appellant's findings on the basis that a reduction in the sales values per square foot in comparison with the approved scheme, the build costs and the proposed 20% profit margin have not been justified.
30. The appellant explains that the lower sales values are the result of an increase in the size of most of the proposed units in comparison with the approved scheme. It is reasonable to conclude that sales values will taper as units increase in size. In the absence of firm evidence to counter the appellant's viability information, I do not consider that the adopted approach is flawed.
31. The Council explains that a viability review⁴ for Lambeth from July 2018 indicates that an 18% profit margin should be adopted for viability testing purposes. However, that review precedes the decision date for the permitted scheme, which was tested on the basis of a 20% profit margin. Although the proposals are different, compelling reasons have not been put forward which suggest that an 18% profit margin would now be more appropriate.
32. The Council undertakes viability calculations within their appeal statement, which include build costs that are lower than the appellant's assumptions; however, it accepts that the substructure of the development would be costly. In the calculations where the appellant's cost estimates for the substructure

³ The Community Infrastructure Levy Regulations 2010

⁴ London Borough of Lambeth: Local Plan and Community Infrastructure Levy Viability Review

are intended to be included, the Council has used the substructure costs for the house and not the entirety of the development. With the Council's assumed build costs, the projected substructure costs and a 20% profit margin taken into account, the proposal would be unable to make an affordable housing contribution.

33. The Council says that if it had been minded to approve the application, the appellant's viability information would have been independently assessed. Nevertheless, the Council has not provided compelling evidence which indicates that a contribution can be made. Based on the evidence before me, the proposal would be unable to make a contribution towards affordable housing. The proposal therefore accords with LP Policy H2.

Other Matters

34. The proposal would redevelop a small site to make a modest contribution to housing supply in an accessible location. It would offer a mix of sizes of property. There would be economic benefits arising from the construction process and the future occupiers spending on goods and services in the locality. The appellant has put forward the proposal would optimise the use of the site; however, this would not be the case given the issues I have identified.
35. I have carefully considered the matters raised by interested parties. However, the evidence provided is such that no matter is so compelling that it leads me to different conclusions on the main issues in dispute between the appellant and the Council.

Conclusion

36. The proposal would be acceptable in respect of matters relating to the character and appearance of the area, flood risk, parking and affordable housing. However, it would not provide an appropriate standard of accommodation for future occupiers. Consequently, the proposal conflicts with the development plan. Whilst I acknowledge the benefits associated with the proposal, I do not find that there are material considerations which outweigh the conflict with the development plan.
37. For the reasons given above, I conclude that the appeal should be dismissed.

Mark Philpott

INSPECTOR