
Appeal Decision

Site visit made on 13 January 2021

by **M Shrigley BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021

Appeal Ref: APP/C5690/W/19/3242037

Land (car park) adjacent to Kelvin House, Worsley Bridge Road, Sydenham, London SE26 5BS

- 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 Danish Hanif against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/19/110305, dated 21 December 2018, was refused by notice dated 12 June 2019.
 - The development proposed is for the formation of 27 residential apartments.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address provided on the application form twice refers to the site as being on land adjacent to Kelvin House. I have therefore condensed the address details in the above header in line with the other appeal documents, as those details are not in dispute.
3. A series of suggested plan amendments have been submitted following notification of the appeal. The plan amendments involve new window openings and as a result I consider they require further local consultation to prevent prejudice to any third party. Thus, I have not accepted those as changes to the appeal plans.
4. I acknowledge that the Draft London Plan has reached the 'Intend to Publish' stage. As a result, its policies carry significant weight.
5. The Decision Notice in contention refers to a cramped overdevelopment of the site. However, this in the main relates to the acceptability of resultant living conditions for future occupiers. Therefore, my reasoning reflects that.

Main Issues

6. The main issues are: (i) whether the loss of employment land is justified; (ii) whether it is demonstrated that affordable housing provision cannot be made on site; and (iii) whether future occupants of the scheme would have acceptable living conditions having regard to internal space provision, light and outlook.

Reasons

Loss of employment land

7. Parties acknowledge that the appeal site is within a Local Employment Location (LEL) referred to by the Council's development plan. Policy 3, Point 2 of the Lewisham Core Strategy Development Plan Document 2011 (LCSDPD) specifically states that the Council will protect LELs for a range of uses within the B Use Class (B1, B8 and where appropriate B2 industry), to support the functioning of the local economy. DM Policy 10 of the Lewisham Development Management Local Plan 2014 (DMLP) complements CS Policy 3 in that it has similar strategic aims to protect employment locations.
8. The Council's Employment Land Study (March 2019) is also referred to by parties in the evidence. The document supports the requirement for a master planned approach to the LEL designated area, and highlights that the site should be safeguarded for employment uses.
9. The appellant has suggested that the Council have misinterpreted DM Policy 10 in that it applies to existing buildings. I note that Point 4 of DM Policy 10 states that: *permission for the change of use of a building from business use to residential use, or other uses will not be granted due to the effect the proposal would have on the continued commercial functioning of the area as a whole and their incompatibility with the uses on the LEL*. I accept that the proposal does not involve the change of use of a 'building'. However, the car park previously served a commercial building within the LEL and DM Policy 10 also involves clear links to Policy 3 of the LCSDPD with a shared aim.
10. I acknowledge that the appeal site is in a sustainable location with good access to public transport and services. Although the scheme is described by the appellant as mixed use it would be predominantly residential in nature. There are no guarantees the office space elements on the ground floor would be delivered and occupied. This is because no end user of the space is identified or an obligation present to ensure deliverability. As a result, I am unconvinced the scheme would deliver substantial employment opportunities which the Council's development plan supports once built. The appellant also states that the site has been marketed for commercial purposes and this has not been successful. But I do not have any details of the marketing to give that argument any significant weight.
11. I appreciate that Kelvin House has already been converted to residential units (following consideration of prior approval application LPA reference DC/14/88645) and that the car park area now subject to appeal is not in active use. However, those considerations would not prevent the appeal site from being developed for employment led purposes in accordance with the Council's development plan. It is still a significant portion of land which could contribute to local employment needs as part of the LEL. I accept that further residential development on the site could compromise the delivery of the rest of the LEL, which could be master planned for employment purposes. This is also because some uses within the B use class may be curtailed by increased sensitivity to dwellings.
12. The Council have achieved a 101% figure in the 2019 Housing Delivery Test (HDT) and are able to demonstrate a 5.61-year housing land supply. There is no evidence that the current HDT figure is below the 75% threshold set out in

the National Planning Policy Framework (the Framework). As a result, the housing policies of the Council's development plan remain up to date.

13. I have considered that the Draft London Plan puts Lewisham in the 'retain' category for industrial land management. The Draft London Plan seeks broadly that Boroughs in this category should intensify industrial floorspace capacity following the general principle of no net loss. I also acknowledge the Secretary of State's letter to the Mayor dated 13 March 2020, which advises that: the proposed industrial land policies are considered to be unrealistic; taking an over-restrictive stance to hinder Boroughs' abilities to choose more optimal uses for industrial sites where housing is in high demand. The letter directs a more proportionate stance removing the 'no net loss' requirement.
14. Bringing these points together, it is the case that housing land supply should not be seen as a maximum. I also appreciate housing pressure could further increase over time in the locality. Nevertheless, there is no evidence submitted to support that other parts of the administrative area would not be able to provide additional housing if required at this point in the development plan period.
15. I therefore find that the loss of employment land within the LEL is not justified to allow the scheme. This would conflict with the aims of Policy 3, point 2 of the LCSDPD and DM Policy 10 of the DMLP which combined seek to protect LELs as small, well defined clusters of good quality buildings for office, industrial and warehouse uses, within walking distance of town centres to meet employment needs.

Affordable housing provision

16. The Council's development plan supports the delivery of affordable housing provision as a strategic priority. The Council have referred to a preference for affordable housing to be provided on-site and that off-site provision will only be accepted in exceptional circumstances. This approach is consistent with the Framework which seeks to ensure residential schemes lead to the delivery of mixed and balanced communities.
17. Neither on-site provision nor or a commuted sum for off-site affordable housing provision were agreed upon during the planning application process. This stems in part from the dispute between parties over the level of anticipated developer profit/risk return a viability assessment should be based upon. The appellant seeking an overall return margin of 20% and the Council suggesting 17.25% would be appropriate. Based on the 17.25% figure I also note the appellant originally anticipated the scheme would result in a deficit even with 100% market homes.
18. Further revised viability information has been produced during the appeal process. The Council indicate that a contribution of £337K would be appropriate in the absence of on-site provision for two affordable units.
19. The appellant deems it unlikely that a registered provider would take on one or two units that the scheme could potentially afford. However, there is no substantive evidence submitted to support that a registered provider would not be able to successfully take on any units provided. I therefore give little weight to that argument based on the information before me.

20. I appreciate that an in-principle agreement to a commuted sum payment negotiated with the Council has been suggested by parties during the appeal process. The appellant refers to willingness to enter into such an agreement. But there is no completed obligation submitted to secure a financial contribution. As a result, there is no mechanism to secure the delivery of affordable housing elsewhere within the conurbation to give any weight to.
21. I also note that the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case. I accept that a scheme surplus would be apparent based on the information provided by parties which could potentially fund off-site provision. Nonetheless, I am not persuaded there are overriding circumstances for affordable housing not to be met on-site based on the evidence before me.
22. I therefore find that the development does not successfully demonstrate that the affordable housing provision it triggers cannot be met on site. This would conflict with Policy 1 of the LCSDPD; DM Policy 7 of the DMLP; as well as the Mayor of London: Affordable Housing and Viability Supplementary Planning Guidance (2017) which in combination seek to provide appropriate levels of affordable housing in the area where there is a proven local need.

Living conditions

23. The appeal building's layout would result in around 78 percent of the units being single aspect, which in the main are east and west facing. This would be contrary to the advice of the Mayor of London Housing Supplementary Planning Guidance (SPG) which states that developments should minimise the number of single aspect dwellings. I do not accept the appellant's suggestion that the proposed balcony areas would improve the single aspect nature of the scheme. The units would still be overly reliant on a single source of light and outlook.
24. Furthermore, the SPG specifically advises that single aspect 3-bedroom units should be avoided. But there would be a total of 3, 3-bedroom single aspect units within the appeal building. Moreover, the ceiling heights of rooms would be 2.3 metres as opposed to the recommended height of the SPG of 2.5 metres with some of the rooms having deficient internal space levels when measured against the relevant technical space standards.
25. The appellant's daylight assessment when the scheme was assessed by the Council identified living/ kitchen/ diners for several of the units would fail to pass the target criteria for Average Daylight Factor (ADF). Although I accept natural light levels could be improved by additional windows, this would involve amended plan revisions which would need to be subject to further local consultation. Therefore, the appeal scheme would lead to substandard levels of daylight for future residents based on the plans subject to appeal. Additionally, flats 5, 13 and 21 would directly face onto a brick wall and would have poor levels of outlook. All the above issues suggest that the layout would be overly confined and would not lead to the high-quality internal space that local policy advocates.
26. I acknowledge that parties agree the roof top garden space would have sufficient levels of sunlight and daylight and I have no reason to take a different view. Nonetheless, the position of the roof top play and amenity area would be close to the open storage yard and business adjacent. Because of its position I agree commercial activity within the storage yard may well result in

complaints from future occupants of the scheme using the space. Whilst I note there is amenity provision in short walking distance of the appeal site this is not a strong reason for the amenity space provided to be off putting for future occupants to use.

27. Parties agree wheelchair accessible units within the scheme would be able to meet manoeuvrability requirements subject to minor plan amendment. A planning condition would be able to secure this. Nevertheless, acceptance of that matter does not take away from the other issues of living condition quality which weigh against the scheme.
28. Accordingly, I find that future occupiers of the scheme would not have adequate living conditions. This would conflict with: Policy 3.5 of the London Plan (2016) which requires that housing developments should be of the highest quality internally, externally and in relation to their context and to the wider environment; and Policies DM 32 and DM 33 of the DMLP which seek to ensure development provides an appropriate level of residential quality and amenity inclusive of outlook, light levels, the functional requirements of future residents and the adequacy of internal space standards. It would also conflict with the Mayor of London Housing SPG (2016) which supports the delivery of quality homes for all of London's residents having regard to the overall standard of living accommodation provided.

Other Matters

29. The appellant briefly refers me to a carbon offset contribution and what is described as a sustainable fit out of the commercial units. But I have no firm details of the basis of that provision or what the construction details involve. There is no completed obligation to secure a financial contribution or any other details in any event. Nor is there any evidence to suggest a condition would be appropriate to secure specific construction details required locally.
30. I also note that appeal APP/G5180/W/17/3181977 mentioned by the appellant relates to a plot to the south of the application site that falls within the London Borough of Bromley. That decision was subject to different local plan policy considerations inclusive of industrial land provision and the appeal scheme before me involves a unique set of site-specific material considerations in any event. Therefore, I give comparisons to that other appeal decision no significant weight.

Planning Balance and Conclusion

31. I have found that there would be clear conflict with the Council's development plan arising from the appeal scheme which would result in substantial harm. There may be some benefit in further boosting housing supply and choice in the area generally. But there are considerable factors which outweigh that with respect to: the loss of employment land; inadequate affordable housing provision and substandard living conditions.
32. Planning law requires that applications for planning permission be determined in accordance with the development plan for the area unless material considerations indicate otherwise. When applying the content of the Framework there are no considerations in this case which indicate that the plan should not be followed.
33. For the above reasons therefore, the appeal does not succeed.

Matthew Shrigley

INSPECTOR