



Appeal Decision

Site Visit made on 9 June 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2021

Appeal Ref: APP/N5660/W/20/3251633

Rodenhurst Court, Rodenhurst Road, London SW4 8AD

- 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 Paul MacLennan against the decision of London Borough of Lambeth.
 - The application Ref 18/02533/FUL, dated 13 June 2018, was refused by notice dated 14 November 2019.
 - The development proposed is demolition of the existing garages and erection of part single, part 1, part 2 storey 'L' shaped building to provide 3 dwelling houses (Use Class C3) with roof terraces, and the provision of car parking spaces, refuse and cycle stores, landscaping and associated alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed development above is taken from the Council's decision notice and differs from that provided in the application. The appellant has indicated that they are in agreement with this change and have adopted it in their appeal submissions. I am satisfied that the change is merely a more detailed description of the proposal and I have determined the appeal on this basis.
3. The fourth reason for refusal raised concern that the application failed to demonstrate safe access to and from the site for emergency and servicing vehicles, and safe pedestrian access. Additional information was provided as part of the appeal and the Council has confirmed that it considers this reason for refusal has been addressed. On the basis of the evidence provided, I am satisfied that this matter has been satisfactorily addressed and I have proceeded on this basis.
4. The appeal is supported by a completed unilateral undertaking (UU) from the appellant dated 4 January 2021 and made pursuant to section 106 of the Town and Country Planning Act 1990. The Council supports the level of financial contribution towards the provision of off-site affordable housing provided for in the UU, but, in the absence of the inclusion of a late stage review mechanism, opposes the development on that basis.
5. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties were given the opportunity to comment on the implications of the resulting changes for this appeal. The references to 'the Framework' made within my decision are to this revised version.

6. Since the application was determined, the previous London Plan (2016) has been superseded by the London Plan 2021. The main parties were given the opportunity to comment on the relevant policies of the replacement plan and I am therefore satisfied that neither party has been prejudiced by this change. I have referred to policies of the London Plan 2021 where relevant, rather than those of the 2016 plan originally referred to in the Council's decision notice.

Main Issues

7. The main issues are the effect of the proposed development on (i) the character and appearance of the appeal site and surrounding area; (ii) the living conditions of the occupiers of nearby properties, with particular regard to outlook and privacy; and whether the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to outlook, privacy and private amenity space; and (iii) whether or not the proposal would make appropriate provision for affordable housing.

Reasons

Character and appearance

8. The appeal site comprises a group of 12 single storey garages and an area of hardstanding, situated to the rear of a three storey block of flats, 1-12 Rodenhurst Court (Nos 1-12). Originally the garages were intended to serve the occupants of these flats. However, it is accepted that this relationship did not occur, and the garages and wider appeal site have been in separate ownership and use for over 30 years.
9. The proposal would result in primarily two storey development, with roof terraces forming a third storey in parts. Although the existing garages do not provide any particular visual interest, it is a form of development that is consistent with its position at the rear of a residential block of flats. Notwithstanding the lack of functional relationship with Nos 1-12, the building's use as garages is low key, as is its overall scale. It forms a coherent part of the existing character of the area and its single storey height contributes to the prevailing sense of spaciousness which exists between the taller buildings and the tighter grained two-storey group of dwellings, which includes Nos 8a, 8c and 14-16 Clarence Avenue, at the rear of the site.
10. There is support for the proposal provided by both local and national policy to, amongst other matters, make efficient use of land and for the reuse of previously developed land particularly for the provision of housing. This support is balanced with the need to safeguard and improve the environment. The footprint of the proposed building would be contained within the existing footprint of the garages. However, above ground level the building would have greater depth and overall massing. Further, the proposal would more than double the height of built form on the site. The proposal would use high quality materials and would, in isolation, provide visual interest with its modern, geometric design and attention to detail. The layout could be considered to respond positively to the features of the site itself. However, in doing so, it would fail to respect the surrounding context beyond the site boundaries.
11. Whilst the scale of development in the surrounds is not characterised by single storey development, the proposed increased height of built form at the appeal site, in combination with overall bulk and massing generated by the desire to

make efficient use of the site, would result in a development that would not integrate well into its surroundings. Although the height of the development would be subordinate to surrounding development, the overall scale and form of the proposal would dominate its space and harmfully diminish the prevailing sense of spaciousness currently experienced.

12. Further, the complicated form of the proposed development with staggered geometric shapes, cantilevered bays, series of stepped forms and irregular patterns of glazing, would appear significantly at odds with the surrounding unassuming forms of development. I acknowledge that the proposal would not be highly visible in the street scene. Nevertheless, it would be glimpsed through the access gap between Rodenhurst Court and No 3 Woodlands Terrace and would be highly visible from those and other neighbouring properties, where it would be read as a prominent and discordant feature in this backland position. The proposal does not appear to draw reference from surrounding development; as a result, there would be a lack of coherence with its surroundings. I do not consider that its impact would be mitigated to any significant degree by the varied roofline, staggered elevations or mix of materials, the overall mass would prevail. The proposal would be a visually intrusive built form that would appear overbearing and oppressive.
13. I therefore conclude that the proposed development would unacceptably harm the character and appearance of the appeal site and surrounding area. Thus, it would conflict with Policies Q5, Q7 and Q14 of the Lambeth Local Plan 2015 (LP) and Policies D3 and D5 of the London Plan. Together these policies seek high quality design that preserves or enhances the prevailing local character.

Living conditions

14. It is agreed between the parties that the windows in Nos 1-12, facing the appeal site, serve kitchens and bathrooms and that because the bathroom windows are obscure glazed, the proposal would not result in harmful loss of outlook from the bathrooms or loss of privacy within. This aside, whilst I accept that the kitchens are unlikely to be used for dining purposes because of their size, and that users would be stepped back from the windows by virtue of the position of kitchen units or sinks, the significant bulk of the proposed building would dominate the outlook from many of these windows, particularly those at ground and first floor levels. Even though the proposed building could be considered to be visually more attractive than the utilitarian garages, I do not consider that this would mitigate the loss of spaciousness and overbearing impact that would occur.
15. The proposed building would double the height of the existing walling along the boundary with Clarence Avenue. This would bring development directly in front of the first floor side elevation window, and closely north east of other windows in No 14b Clarence Avenue (No 14b). Despite the position of the lightwell, of proposed unit B, providing some set back from the side window of No 14b and this window not serving a habitable room, the increased height and bulk of built form visible from this property would have an overbearing impact on the occupiers.
16. The development would also introduce an overbearing and visually dominant feature when viewed from the back gardens and facing room windows of Nos 8a and 8c Clarence Avenue (Nos 8a and 8c). This would significantly reduce the outlook and create a feeling of enclosure, rather than visual interest, which

would diminish the enjoyment of these spaces. The presence of the proposal would therefore harmfully detract from the quality of the living environment that the occupiers of these properties currently experience.

17. That the occupiers of Nos 8a and 8c may have a more open aspect, even when taking into consideration the appeal scheme, than is currently experienced by occupiers of other properties within Clarence Avenue, does not alter my findings. It is the effect of the proposals on existing living conditions that is of concern and occupiers of Nos 8a and 8c have a reasonable expectation of some sense of space continuing beyond their boundaries.
18. Whilst views of the proposal would also be possible from No 3 Woodlands Terrace and No 6d Clarence Avenue, these properties would be further away from and at oblique angles to the main bulk of the proposal, such that it would not significantly impact the outlook experienced from these locations in a harmful manner.
19. Due to the method of enclosure of the proposed external amenity areas and the proposed window arrangements, including orientation and separation distances from neighbouring properties and the proposed use of a 50% mix of obscured glazing panels within the larger openings, there would not be direct overlooking of neighbouring properties or their external amenity spaces (including Nos 1-12, Nos 6d, 8a, 8c and 14b Clarence Avenue and No 3 Woodlands Terrace). Any resulting perception of overlooking would not be so significant as to result in unacceptable harm to the living conditions of the occupiers of these neighbouring properties. I find this to also be the case in respect of overlooking and perceived overlooking of the proposed development.
20. The scheme would include several private outdoor amenity spaces for each dwelling, including roof terraces, courtyards and balconies. Although the proposed balconies are considered by the Council to fall below minimum size standards, when combined with the other spaces proposed, the evidence suggests that a minimum of 30 square metres of private amenity space for each unit would be provided, in compliance with LP Policy H5. The amenity spaces would be directly accessible from the dwelling that they serve. Although constrained in parts by the need to ensure mutual privacy, the spaces would, nevertheless, provide useable external private amenity space with uninterrupted views of the sky.
21. I have paid regard to the appellant's professional daylight and sunlight assessment which concludes that the development would not result in a notable reduction in the amount of either daylight or sunlight enjoyed by the occupiers of neighbouring buildings. It further concludes that the provision of natural daylight and sunlight to the habitable rooms within the proposed development itself would achieve, or exceed, the minimum target values for natural daylight set out within the Building Research Establishment Guidelines 2011 and the British Standards. The Council has not challenged these findings and there is no substantive evidence to lead me to a different conclusion. Despite the concerns raised by local residents in respect of such matters, I am satisfied that the proposed development would not unduly affect the living conditions of nearby residents in relation to sunlight and daylight and would provide satisfactory living conditions for future occupiers in this regard.
22. Whilst outlook from the appeal scheme would be somewhat restricted, in the main by the proximity of the proposed development to Rodenhurst Court, in

this instance because all of the proposed units would exceed minimum standards for internal space, would have adequate levels of privacy and would have adequate natural lighting, the matter of whether or not outlook was acceptable would be for future occupiers to decide.

23. In concluding on this issue, the proposal would provide satisfactory living conditions for future occupiers with regard to outlook, privacy and the provision of external amenity space. I have also found that the proposal would not cause unacceptable harm to neighbouring occupiers in regards to privacy or sunlight and daylight impacts. However, the proposal would materially harm the living conditions of occupiers of neighbouring properties, as identified above, with regard to outlook. Thus, the proposal would conflict with the relevant design aims of LP Policies H5 and Q2 and Policy D6 of the London Plan.

Affordable housing

24. Policy H2 of the LP requires, on sites providing fewer than 10 units, a financial contribution towards the delivery of off-site affordable housing to be sought, in line with the Council's preferred methodology. The parties have agreed that a contribution of £238,559 is required in this case. However, there is dispute between the parties as to whether or not a 'late stage review mechanism' (hereafter referred to as 'review mechanism') should form part of the UU.
25. The applicant initially agreed to the inclusion of a review mechanism but has subsequently withdrawn this agreement. The Council considers that a review is necessary in this case, due to abnormally high build costs that would be generated by the use of higher quality materials than would usually be expected in a development of this type and in this location. The review would allow the Council to scrutinise whether the applicant actually incurs these abnormal costs and, if not, would provide for an increased viable contribution.
26. Although there is support for review mechanisms, regardless of the size of the scheme, within LP Policy H2 and within both the Council's Development Viability Supplementary Planning Document 2017 (SPD) and the Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance 2017 (SPG), this appears to relate to cases where the financial appraisal demonstrates that the maximum amount of affordable housing that a scheme can reasonably support is below the policy target. This has not been argued in this case. Although the Council suggests that lower quality materials could be found to be acceptable, thereby potentially lowering the build costs resulting in the possibility of increased contributions towards affordable housing, it did not refuse the proposal on the basis of inappropriate materials. Furthermore, it has agreed the financial contribution on the basis of the application details which are integral to the overall design of the proposal.
27. It therefore appears to me that the Council is satisfied that the agreed financial contribution would meet the policy target when taking into consideration the development as proposed. Any planning permission granted could be subject to a condition in relation to materials, thereby ensuring build quality would not be compromised and that a viable and adequate contribution to affordable housing would be maintained. Therefore, on the basis of the evidence before me, I find that the review mechanism is not necessary in this case.
28. Nevertheless, I am satisfied that there is a development plan basis for seeking a financial contribution towards the provision of affordable housing and that the

submitted UU meets the requirements of LP Policy H2. It would satisfy the provisions and tests set out in the Framework and the Community Infrastructure Levy Regulations 2010. The contribution towards the delivery of affordable housing would be a benefit of the proposal which I return to later in my decision.

29. It follows that I conclude that the proposal would make appropriate provision for affordable housing. It would comply with LP Policies D4 and H2, Policy H2 of the London Plan, the SPD and the SPG, which together and amongst other matters seek to secure and deliver affordable housing.

Other Matters

30. I note the concerns raised by third parties including in relation to noise impacts. However, given my findings in relation to the main issues, I have not considered these matters further.
31. Both parties make reference to the LP currently being under partial review. The revised plan was submitted for examination during May 2020 and is therefore at quite an advanced stage. However, I have not been directed by either of the main parties to any emerging policies, or changes to existing policies, that are considered to impact on the appeal proposals. It has not therefore had a bearing on my decision.
32. Three new dwellings would make a modest but important contribution towards boosting the supply of housing, as sought by both local and national policies. The proposal would seek to make more efficient use of previously developed land in an accessible location. I afford these benefits modest weight commensurate with the scale of development proposed. There would be a policy compliant financial contribution towards the delivery of affordable housing, secured through the UU. This would be a public benefit to which I attribute considerable weight.
33. However, the appeal proposal would result in unacceptable harm to the living conditions of the occupiers of nearby properties and to the character and appearance of the appeal site and the area. These are matters I give significant weight. Overall, the benefits of the proposal, when considered individually or cumulatively, would be outweighed by the harm I have identified. The proposal would conflict with the development plan as a whole and there are no other considerations including the provisions of the Framework which outweigh this finding.

Conclusion

34. For the reasons given above the appeal is dismissed.

S Tudhope

INSPECTOR