



Appeal Decision

Site Visit made on 1 September 2021

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2021

Appeal Ref: APP/N5660/W/20/3262878

98 Bromfelde Road, London SW4 6PS

- 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 Thomas Raffe (Lonsdale Property Development) against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 19/04501/FUL, dated 2 December 2019, was refused by notice dated 16 October 2020.
 - The development proposed is the erection of a new 3-storey, plus a basement dwelling house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Between the determination of the planning application and the appeal coming before me, the new London Plan¹, a new Local Plan² and a revised Framework³ were published. The Council has subsequently indicated that Policies D6, T5 and T6.1 of the new London Plan and Policies H2, Q2, T1, T3, T6 and T7 of the new Local Plan are relevant to this appeal. I have had regard to the current iterations of all these documents in assessing the appeal, in respect of which there has been appropriate opportunity for comment.
3. Policy H2 in the new Local Plan removes the former requirement for an affordable housing contribution on developments of fewer than 10 units. As a result, the Council concedes that the first reason for refusal falls away. Accordingly, I make no further reference to it in my decision.

Main Issues

4. The main issues are (a) the effect of the proposed development on the living conditions of neighbours with particular reference to loss of outlook, daylight and creating a sense of enclosure; and (b) whether or not the proposed development would adequately address car parking and sustainable modes of transport.

¹ The London Plan 2021

² Lambeth Plan (2021)

³ National Planning Policy Framework (2021)

Reasons

Living Conditions

5. The proposed building would be positioned forward of the recessed side projection on the neighbouring property at 96 Bromfelde Road. It would also be forward of the windows on the side elevation of the main part of this neighbouring building. I acknowledge that not all the front facing windows on the neighbouring side projection are clear glazed or serve habitable rooms, and that the appeal site is within a relatively dense urban area.
6. Nevertheless, given the height and position of the proposed dwelling a tunnelling effect would be created to the windows on the side projection. Not only would daylight and outlook be affected but the physical presence of the building would have a permanent enclosing effect. Although the windows within the side elevation of the main part of 96 Bromfelde Road would not experience the same tunnelling effect, there would nevertheless be some loss of light and the outlook would be compromised. Together with the presence of the proposed building creating a sense of enclosure, the living conditions in these rooms would be significantly compromised.
7. The appellant has provided a Daylight and Sunlight Study. However, in relation to the windows discussed above and particularly the habitable room windows, it does not provide me with sufficient reassurance that the scheme would be acceptable. In particular, the percentage loss of total sunlight to window hours and the losses shown for the vertical sky component would be considerable. The Study itself acknowledges that there will be non-compliance with the British Research Establishment guidelines⁴ in relation to a bedroom window. I am also mindful that the Study does not assess the outlook or sense of enclosure that would result from the proposed building, matters on which I have judged there to be significant harm.
8. Accordingly, I find that the proposal would be an unneighbourly form of development that would be harmful to the living conditions of neighbours with particular reference to loss of outlook, daylight and creating a sense of enclosure. The proposal would therefore be contrary to Policy Q2 of the Local Plan and Policy D6 of the London Plan, which amongst other things, seek to ensure that developments do not cause harm to neighbouring occupiers in relation to such issues as outlook, daylight and creating a sense of enclosure.

Sustainable Transport

9. The appeal scheme is for a single dwelling in a controlled parking zone with no off street parking provided. In accordance with Policy T6 of the Local Plan, it is required to be car free and provide car club membership. In this case, the Council require an agreement to be entered into, to ensure that such matters are addressed.
10. The appellant has provided a Unilateral Undertaking (UU) which would restrict future occupiers from applying for a residents parking permit. The UU does not provide for a monitoring fee required by the Council but the appellant has indicated a willingness to make this contribution. Membership of a car club has not been included in the UU because it is said that the present owner, who intends to occupy the proposed dwelling, does not drive and would not make

⁴ Site layout planning for daylight and sunlight: a guide to good practice (BR 209)

use of any such membership. However, the appellant indicates an acceptance of this requirement if deemed necessary.

11. Notwithstanding the appellant's apparent willingness to provide a contribution towards monitoring and car club membership, there is no mechanism to address both of these issues before me as part of the appeal. I note that the Planning Practice Guidance explains that a negatively worded condition 'limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases'⁵. As is evident from the dispute, the terms of any such agreement are not agreed between the main parties. Consequently, I cannot therefore be sufficiently certain the appeal scheme would be a development in accordance with the Local Plan.
12. As a result, the proposal would not adequately address car parking and sustainable modes of transport. Accordingly, it would be contrary to Policies T1, and T6 of the Local Plan, which amongst other things, promote sustainable transport and seek to ensure that developments are car-free and provide car-club membership through a suitable planning obligation.
13. The Council has drawn my attention to Policies T5 and T6.1 of the London Plan and policies T3 and T7 of the Local Plan. However, as the scheme proposes cycle storage, does not exceed the maximum car parking standards and would not require dedicated servicing arrangements, I am satisfied that these policies are not directly relevant to my decision.

Other Matters

14. The appellant has pointed me towards Policy H2 of the London Plan, citing its support for the need to make use of small sites. Similarly, the Framework, at Paragraph 69, acknowledges the role windfall sites can play in providing housing and accordingly I give this matter some weight.
15. The appellant raises the issue of design and points to both the engagement with the Council and the absence of objection in this regard. However, this would be a lack of harm and as such, it would be neutral in any balance.
16. The appellant questions whether a neighbour's bedroom should be considered a habitable room if it is below the sizes specified in the Space Standards⁶. The Standards have been adopted by Policy D6 of the London Plan and apply to conversions as well as new dwellings. However, many properties were converted into flats with small bedrooms prior to the publication of these Standards but this does not mean that they are not used as bedrooms or should be considered less favourably. Indeed, if a room is already compromised in some way, for example being below the size set out in the Standards, it may be more susceptible to harm caused by outside influences and therefore require greater protection. I therefore do not accept the appellant's argument in this respect.
17. Although the appellant has indicated a willingness to enter into an obligation to provide car club membership and a contribution towards monitoring, such provisions would not lead me to allowing the appeal as I have found the proposal would give rise to harm in other areas, over which the submission of

⁵ Paragraph: 010 Reference ID: 21a-010-20190723

⁶ Nationally Described Space Standards (2015)

an additional or revised UU would have no direct effect. Therefore, to put the appellant to additional work of overcoming this particular reason for refusal would be abortive and unfair.

Planning Balance and Conclusion

18. The Government's objective is to significantly boost the supply of housing and the proposal would provide a new dwelling in a location with adequate access to services. Given the small scale of the proposal this would attract limited weight. The scheme would also lead to a small and time-limited economic benefit during the construction phase, which may give rise to extra local employment.
19. Conversely, the proposal would cause harm to the living conditions of neighbouring occupiers and would not adequately address the issue of sustainable transport. These matters attract significant weight and no other material considerations are sufficient to justify allowing the appeal.
20. The proposal would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

Stewart Glassar

INSPECTOR