



Appeal Decision

Site visit made on 3 May 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2023

Appeal Ref: APP/A5840/W/22/3308237

43 Madron Street (Formerly 1A Madron St), London SE17 2LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Sol Khan against the Council of the London Borough of Southwark.
 - The application Ref 22/AP/0619, is dated 23 February 2022.
 - The development proposed is a 2-bed 3-person house.
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Decision

1. The appeal is dismissed and planning permission for a 2-bed 3-person house is refused.

Procedural Matter

2. The site address was given on the planning application form as 1A Madron Street. At some point after the planning application was submitted the plot was renumbered as 43 Madron Street; I have therefore used the revised address given on the appeal form and subsequent appeal evidence in the banner heading above.

Background and Main Issue

3. The appeal is against the Council's failure to determine the planning application. The Council had prepared a draft delegated report in respect of the application and gave a single putative reason for refusal; along with suggested conditions in the event of the appeal being allowed this made up the Council's appeal submission.
4. The single reason advanced by the Council forms the basis of the main issue in this appeal, which is whether or not the development would make an appropriate provision for affordable housing.

Reasons

5. The appeal site is on the north-west side of Madron Street, just off the Old Kent Road. It has a total area of around 42m² and contains a building which was previously a car repair garage, although this was not in use either when the planning application was submitted or at the time of my site visit. The surrounding area is mixed in its character; the nearby part of Old Kent Road is dominated by ground floor commercial uses with residential properties above,

while Madron Street is predominantly residential. The proposed development is the demolition of the existing garage building, and the erection of a house with semi-basement comprising two storeys to the street frontage and three storeys at the rear, with a central glass atrium, sedum roof and roof top terrace, as well as associated cycle and refuse storage.

6. Policy P1 of the 2022 Southwark Plan requires that development creating nine homes or fewer must provide “the maximum amount of social rented and intermediate homes or a financial contribution towards the delivery of new council[,] social rented and intermediate homes with a minimum of 35% subject to viability...”. It also requires that “viability appraisals and reviews are required for *all* developments” (my emphasis), and that “these must be published for public scrutiny”.
7. The appellant considers that the requirements of Policy P1 had been addressed by an e-mail between the main parties in July 2022, in which it was suggested that a condition could be used requiring a viability assessment to be submitted “with the final level of contribution be paid before development starts”. It is not clear from the evidence before me whether this suggestion came from the appellant or from the Council, but the appellant considers that it would be appropriate in the light of the advice in Paragraph 55 of the National Planning Policy Framework (“the Framework”) that “local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations”.
8. A viability appraisal submitted following a conditional grant of planning permission would be unlikely to be submitted to the degree of public scrutiny sought by Policy P1. Furthermore, any such condition could not simply require the submission of a viability appraisal, but would also need to secure the payment of any affordable housing contribution which the appraisal might establish would be necessary to ensure compliance with the development plan. The Planning Practice Guidance (“the PPG”) is clear that no payment of money or other consideration can be positively required when granting planning permission¹, and 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 other than in exceptional circumstances². The PPG goes on to suggest that this means situations where there is clear evidence that the delivery of the development would otherwise be at serious risk, such as may be the case for particularly complex development schemes.
9. I have some sympathy with the appellant on this matter, inasmuch as the Council’s failure to determine the planning application means that the need for a viability appraisal, and the subsequent question of whether or not an affordable housing contribution would be required, have not been addressed earlier before the scheme came to appeal. However, there is no evidence before me to suggest either that the development is especially complex, or that its delivery would be at serious risk. I am not therefore persuaded that this appeal represents the exceptional circumstances envisaged by the PPG.
10. The appellant suggests that it is probable that “any viability assessment would return a negligible financial contribution considering the cost of the

¹ Paragraph: 005 Reference ID: 21a-005-20190723

² Paragraph: 010 Reference ID: 21a-010-20190723

development in respect of one house". To my mind, however, this pre-empts both the findings of any viability appraisal and the decision maker's ability to properly assess and interrogate it. While it may well be likely that any financial contribution made by a single dwelling scheme would be modest, the development would also make a very limited contribution to meeting housing need in the borough. Given that the 2022 Southwark Plan is a relatively recently adopted document, and that the need for *all* new residential development to contribute to the provision of affordable housing has been (I must assume) rigorously tested at examination, this is not a consideration which carries significant weight in favour of the appeal scheme as it stands.

11. In the absence of both a viability assessment and a means of securing a contribution (should one be shown to be necessary), I conclude that the development would not make an appropriate provision for affordable housing. The proposal therefore fails to comply with Policy P1 of the 2022 Southwark Plan, the relevant provisions of which I have set out above. It also conflicts with Policies H2 and H4 of the London Plan 2021 which seek to secure the provision of, or contributions towards the provision of, affordable housing, including on or from small sites where appropriate.

Other Matters

12. The appeal scheme represents the revision of a 2021 proposal for the site ("the 2021 scheme") which was refused planning permission, and an appeal subsequently dismissed, during 2022³. The appellant considers that the current proposal has addressed the main issue in the previous appeal (which related to living conditions for future occupiers). Although I have not been provided with full details of the 2021 scheme, I have of course reached my decision in this appeal on the basis of the planning merits of the proposal before me. Nevertheless, I note that the Council's draft delegated report did not identify any significant shortcomings in respect of living conditions for future occupiers, and none of the evidence before me leads me to a different conclusion on this point.
13. The appeal site lies within the Thomas A Becket and High Street Conservation Area ("the Conservation Area"). In its internal consultation response on the planning application, the Council's conservation team commented that "there would be harm to the significance of the Conservation Area by virtue of the bulk and height of the rear element of the proposal and the clutter caused in street views of the roof terrace", and that this harm would be "less than substantial". The draft delegated report submitted as appeal evidence stated that the harm caused to the significance of the Conservation Area would be "more than substantial", but that "as these design concerns were not previously raised and used as a reason for refusal" in respect of the 2021 scheme "officers therefore have not included it as a reason for refusal" for the current scheme.
14. The Council's use of the phrase "more than substantial" in respect of the potential harm to the Conservation Area is unusual and, bearing in mind the wording of their conservation team's consultation response, may be a typographical error. However, I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. As heritage assets are irreplaceable, the Framework

³ LPA Ref: 21/AP/3133; PINS Ref: APP/A5840/W/22/3296007

states that they should be conserved in a manner appropriate to their significance (paragraph 189). It goes on to advise that any harm or loss requires clear and convincing justification (paragraph 200) and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 202).

15. The planning application was not accompanied by a heritage statement nor, understandably given the affordable housing issue on which the Council's putative reason for refusal focussed, was the effect on the Conservation Area addressed in any significant detail in the appeal submissions. In view of my statutory duty, given the harm which the Council considers would have been caused to the Conservation Area (and notwithstanding the approach taken in its draft delegated report), had the appeal scheme been acceptable in all other respects it would have been necessary for me to seek further information from the main parties on this matter. However I have not done so as, in view of my finding on the main issue, it could not have changed my overall conclusion.

Conclusion

16. The proposed development would provide an additional dwelling, in a location which is close to a range of shops and services including public transport connections. The existing garage on the appeal site is not an especially attractive building, so I also acknowledge that the scheme would be likely to result in some improvement to the site's appearance. Given the small scale of the scheme as a whole, these are benefits which carry moderate weight in its favour.
17. However, the evidence available does not allow for an assessment of whether or not the development would be able to contribute to the provision of affordable housing in the borough; in the event of it being able to do so, there is no mechanism by which such a contribution could be secured. In view of the pressing need for affordable housing in Southwark, and the associated requirement to secure contributions towards its provision from residential development schemes of all sizes, this is a shortcoming which carries considerable weight; in my view it outweighs the benefits associated with the scheme.
18. As a result, the proposal would conflict with the development plan taken as a whole, and there are no other considerations, including those of the Framework, that outweigh this conflict.
19. For the reasons set out above, I therefore conclude that the appeal should be dismissed and planning permission refused.

M Cryan

Inspector