



Appeal Decision

Site visit made on 19 December 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/A5840/W/23/3323439

2 Somerford Way, London SE16 6QW

- 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 Bogdan Melanuic against the decision of the Council for the London Borough of Southwark.
 - The application Ref 21/AP/2514, dated 16 July 2021, was refused by notice dated 6 December 2022.
 - The development proposed is demolition of existing conservatory and construction of a dormer window to the existing house. Erection of a two-storey extension to provide a 4-bedroom dwellinghouse with dormer windows.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been significantly amended. As a result, I have not sought further submissions.

Background and Main Issues

3. The proposal subject to this appeal has three main elements consisting of the demolition of the existing conservatory at No. 2 Somerford Way; the construction of a rear dormer window to No. 2 Somerford Way; and the erection of a two-storey dwelling.
4. The Council has not raised any issues with the demolition of the existing conservatory or construction of a rear dormer window at No. 2 Somerford Way. In fact, I understand that the proposed rear dormer window is subject to a certificate of lawful development¹ and is therefore permitted. I also note that the proposed two-storey dwelling would be the only element of the proposal that would be located within Metropolitan Open Land (MOL) and the Site of Importance to Nature Conservation (SINC).
5. In the context of the above, the main issues in this appeal are:
 - whether the proposed dwelling would be inappropriate development in the MOL;
 - the effect of the proposed dwelling on the openness of the MOL;

¹ Reference: 21/AP/2514

- the effect of the proposed dwelling on the nature conservation interests of the site, including the protection of a SINC;
- whether the proposed dwelling would make adequate provision for social and intermediate housing; and
- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

6. Part of the appeal site is located within MOL, which comprises Russia Dock Woodland. Policy G3 of the London Plan (2021) affords MOL the same status and level of protection as Green Belt. The Framework states that inappropriate development in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The same therefore applies to MOL. Paragraph 154 of the Framework sets out that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a closed list of stated exceptions. Again, this policy requirement also extends to MOL. Policy P57 of the Southwark Plan (2022) (Local Plan) follows a similar approach.
7. In this case, there is no dispute between the parties that the erection of a two-storey house would not constitute any of the exceptions set out in Policy P57 of the Local Plan or Paragraph 154 of the Framework. Thus, the proposal would be inappropriate development within the MOL and would conflict with Policy P57 of the Local Plan.

Openness

8. The Framework identifies that the fundamental aim of Green Belt is to prevent urban sprawl by keeping land permanently open. The same policy aim therefore applies to MOL.
9. The part of the appeal site within the MOL currently comprises garden space that serves the occupants of No. 2 Somerford Way and some incidental open space that lies adjacent to the garden and forms part of the Russia Dock Woodland. Despite the existing boundary fence, frontage planting and a garden shed, the appeal site is reasonably open.
10. The proposed two-storey dwelling would be located within this part of the appeal site. It would unavoidably take up space where there is currently very limited built form. It would therefore result in significant harm to the spatial openness of the MOL.
11. The appeal site is located on the corner of Somerford Way and Downtown Road. It is positioned close to the entrance to the Russia Dock Woodland on Downtown Road and is visible from this entrance and from the junction of Downtown Road and Salter Road. Thus, it is viewed by many of the users of the woodland entering or leaving from Downtown Road. Views from Salter Road along Downtown Road are currently terminated by the side garden of No. 2 Somerford Way, the adjacent incidental open space, and the Russia Dock Woodland beyond these spaces. Given this, the proposal would result in a very

apparent encroachment of built form into an otherwise reasonably open area. It would also restrict views of the woodland when approaching the MOL from Salter Road. This would significantly harm the visual openness of the MOL.

12. Accordingly, for the reasons above, the proposal would not preserve the openness of the MOL contrary to the fundamental aim of the provisions in the Framework.

Nature Conservation

13. The appeal site forms part of a SINC and is located adjacent to a Local Nature Reserve. An Ecological Assessment (EA) submitted by the appellant, and positively reviewed by the Council's Ecologist confirms the proposal would not be harmful to nature conservation, including protected species. I have no reason to disagree.
14. In terms of achieving a net gain in biodiversity, the EA sets out proposed enhancement measures, which aim to provide this. In the event the appeal was allowed, these measures could be secured by condition(s) on any planning permission.
15. The appellant has also agreed to provide a contribution of £4000 towards the provision of a dense hedge along the boundaries of the site to discourage footfall where the rear of the site meets the woodland. This contribution would be secured by a Section 106 legal agreement. There is no dispute between the parties regarding the requirement for this obligation and I am satisfied that it would meet the three tests set out in paragraph 57 of the Framework.
16. As part of the appeal process, the appellant has submitted a legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to secure the obligation. The Council consider the submitted deed to appear acceptable. However, the deed before me is not dated, and I have some concerns about the document itself. Nonetheless, given I am dismissing the appeal due to the resulting harm to the MOL, I have not sought further explanation regarding these concerns.
17. Accordingly, in the absence of a satisfactory S106 legal agreement, the proposal would conflict with Policy G6 of the London Plan (2021) and Policy P60 of the Local Plan. These policies seek to ensure that new development protects SINC's and contributes to net gains in biodiversity.

Whether the proposal would make adequate provision for social and intermediate housing

18. Policy P1 of the Local Plan requires development that creates 9 homes or fewer (inclusive) to 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. While these requirements do not appear to be fully consistent with the Framework, the supporting text refers to evidence that shows that a high proportion of residents in Southwark require some type of affordable housing. Moreover, the Local Plan has recently been adopted and therefore it is reasonable to assume that there is substantive evidence to underpin this approach.

19. The legal agreement submitted as part of the appeal includes an obligation to provide a financial contribution towards the delivery of new council social rented and intermediate homes. However, as the proposed dwelling would be self-build, this contribution would only be provided in the event that the house was sold within 3 years of completion. There is no dispute between the parties regarding this required obligation.
20. While Policy P1 does not refer to self-build dwellings as being exempt from its requirements, this approach is broadly consistent with paragraph 66 of the Framework. I am therefore satisfied that the obligation would meet the three tests set out in paragraph 57 of the Framework.
21. Notwithstanding this, as explained above, I have some concerns regarding the submitted deed. However, given that I am dismissing the appeal due to the resulting harm to the MOL, I have not sought further explanation on these.
22. Accordingly, in the absence of a satisfactory S106 legal agreement, the proposal would conflict with Policy P1 of the Local Plan.

Other Considerations

23. I note that most of the land where the proposed dwelling would be located is within the existing residential curtilage of No. 2 Somerford Way. However, this part of the existing residential curtilage is within the MOL. Whether or not the change to the boundary of the MOL from that shown on the Proposal Map of the Southwark Unitary Development Plan (1995) (UDP) to that shown on the Policies Map of the Southwark Core Strategy (2011) was intentional, I must take account of the most relevant and up to date information in reaching a decision. Any alterations to the boundary of MOL should be undertaken through the Local Plan process. Although it may be uncommon for parts of domestic curtilage to be bound by this type of designation, there is no dispute between the parties that the boundary of the MOL in the extant Local Plan, which was adopted recently, runs along the flank wall of No. 2 Somerford Way. I must determine the appeal on this basis.
24. Notwithstanding this, even if I was to assess the proposal using the MOL boundary shown on the Proposal Map of the UDP, a significant portion of the appeal site and fundamental part of the proposed dwelling would still be located within the MOL and would constitute inappropriate development. Thus, the change to the MOL boundary is not determinative and I afford it little weight in my decision.
25. Overall, I appreciate that most of the appeal site is not publicly accessible and may no longer fulfil some of the criteria for designation set out in Policy G3 of the London Plan (2021). However, this does not necessarily affect the application of the current policy context nor the effect of the proposal on the openness of the land, which is reasonably open despite being in private ownership. From my observations on site, the side garden of No. 2 Somerford Way and the adjacent incidental open space provide a transition between the houses on Somerford Way and the Russia Dock Woodland, which helps distinguish the MOL from the built-up area. Furthermore, the openness of the appeal site also allows views of the Russia Dock Woodland from Salter Road.
26. In terms of benefits, the proposal would deliver a self-build dwelling within walking distance of local services and facilities, which would contribute to the

Borough's housing supply. Nevertheless, given the proposal is for a single dwelling, its contribution would be limited. It would also have some modest social and economic benefits resulting from spending associated with its construction and subsequent occupation.

27. The Council did not identify any harm arising from the demolition of the conservatory and proposed rear dormer at No. 2 Somerford Way. From the evidence before me and my observations on site, I am of the same view. However, this absence of harm neither justifies nor outweighs the harm resulting from the proposed dwelling. Like the proposed dwelling, these elements of the proposal would provide economic benefits resulting from spending associated with their demolition and construction. Nonetheless, given the modest scale of these elements the benefit would be limited.
28. The appellant also refers to an established fallback position in the form of permitted development rights that would allow the erection of a large, single-storey outbuilding on the side-garden land. I am satisfied that there is a reasonable prospect of this permitted development being implemented in the event this appeal is dismissed.
29. Nevertheless, while the permitted outbuilding would not provide the benefit of an additional dwelling, it would be much smaller than the proposed two-storey house. It would therefore take up less space and would have less of an impact on the spatial openness of the MOL than the proposal. Given its single storey profile, it would also have much less of an impact on the visual openness of the MOL. As such, implementation of the proposal over the fallback position has not been shown to have an effect that would be broadly the same or better and therefore does not weigh in favour of granting permission.

Planning Balance

30. Policy G3 of the London Plan (2021) seeks to protect MOL from inappropriate development in accordance with national policy tests that apply to Green Belt. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt, thus by extension MOL in this instance, and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt, or in this case the MOL, and any other harm, is clearly outweighed by other considerations.
31. The proposal would be an inappropriate form of development within the MOL. I have also found the proposal would result in significant harm to the openness of the MOL. Paragraph 153 of the Framework states that any harm to the Green Belt should be given substantial weight. I have therefore attached the same weighting to the harm to the MOL.
32. In addition, in the absence of a satisfactory S106 legal agreement, the proposal would result in other harm with regards to the Council's supply of housing and biodiversity. To support the Government's objective of significantly boosting the supply of homes, the Framework recognises that it is important that the needs of groups with specific housing requirements are addressed. The Framework also seeks to ensure that planning decisions enhance the natural and local environment by, among other things, protecting and enhancing sites of biodiversity value. These matters therefore carry significant weight.

33. The other considerations that I have identified would not clearly outweigh the harm to the MOL and other harm that I have identified. Accordingly, the very special circumstances necessary to justify the proposal have not been demonstrated. The proposal would therefore conflict with the provisions of the Framework and consequently Policy G3 of the London Plan (2021).

Conclusion

34. For the reasons above, the proposal would conflict with the development plan, read as a whole. Having had regard to all relevant material considerations, it has not been demonstrated that there are any of sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. The appeal is therefore dismissed.

Hannah Guest

INSPECTOR