



Appeal Decision

Site visit made on 14 February 2024

By Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8TH March 2024

Appeal Ref: APP/A5840/W/23/3325347

100 Melbourne Grove, Southwark, London SE22 8QY

- 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 LBX East Dulwich Ltd against the decision of the London Borough of Southwark Council.
 - The application Ref 22/AP/4370, dated 23 December 2022, was refused by notice dated 27 April 2023.
 - The development proposed is the demolition of existing residential storage buildings and erection of new 5 Bedroom, 3 storey house with associated bins/bicycle storage and amenity area.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are:
 - The effect on the living conditions of neighbouring residential occupiers; and
 - The ability to provide the maximum amount of affordable housing contribution.

Procedural Matters

3. The National Planning Policy Framework has been revised subsequent to the decisions made by the Council on applications to which this appeal relates. I have therefore made my decisions with regard to the National Planning Framework (December 2023) (the Framework).

Reasons

Living Conditions

4. The appeal site forms part of an existing plot currently occupied by a two storey late Victorian semi-detached house with a rear outrigger. This is located at the corner of the junction of Melbourne Grove with Lytcroft Grove and forms part of a short terrace on 3 similar properties. Apart from the house, the majority of the remainder of the appeal plot is currently taken up with a variety of storage buildings and structures, which speak of a previous business use, but that are currently now ancillary to the appeal dwelling. A gated driveway from Lytcroft Grove runs at the rear of the plot, where it extends and wraps

- around the rear gardens of the short terrace of which the appeal dwelling forms part.
5. The proposal is to demolish the storage buildings and structures on the site and subdivide the existing plot in two. The appeal plot would front onto Lytcroft Grove and extend along the rear boundary of the existing house in the short terrace of which the existing house on the site forms part. The remainder of the appeal site would form a plot occupied by the existing house, which would be approximately the same size of the other plots of the houses in the terrace.
 6. The proposal involves the construction a 3 storey, 5 bedroom flat roofed detached house that would sit on that part of the appeal site currently occupied by the largest storage building currently on the site. The proposed house would front onto Lytcroft Grove, being set back from the highway to provide a small fenced front garden, with a larger rear garden, which would provide space to a single storey detached garden building that would be used as a home office.
 7. The proposed house would be to the full width of its plot at ground and first floors, being set back at second floor level on the side facing towards the existing house on the appeal site. The front elevation of the proposed house would align with the front of the neighbouring 3 storey residential block. At ground level it would project further rearward than this neighbouring block, but its rear elevation would align with it at first and second floor levels. From the front, the proposed house would appear large and box like, however its proposed brick construction and scale would appear to be in keeping with the general scale of properties on Lytcroft Grove when experienced from the street.
 8. The ground floor of the proposed house would sit approximately 0.7 metres from the side boundary with 98 Melbourne Grove (No.98), with small set-backs at first and second floor levels. Notwithstanding these set-backs, the height, scale and flat roofed box massing of the proposed house would result in it appearing as bulky and unduly prominent, when viewed from the rear rooms and yards/gardens of No.98 and 96 Melbourne Terrace (No.96) as well as from the existing house on the appeal site. From the garden and rear of the existing house on the appeal site, the blank faced flank elevation of the proposed house would be particularly intrusive and dominating.
 9. As a result, the scale, bulk, box like massing and blank flank of the proposed house, would appear to be significantly intrusive and overbearing, resulting in an enclosing effect. This would result in a significant loss of outlook that would be experienced by the existing and future occupiers of No.98 and the existing house on the appeal site as dominating and oppressive. A similar effect, but to a slightly lesser extent would also be experienced by the occupiers of No.96 from their rear garden and rear rooms and from the rear garden of 2 Lytcroft Road.
 10. For these reasons the proposal would cause substantial harm to the living conditions of neighbouring residential occupiers. This would be contrary to Policies P13, P14, P15 and P56 of the Southwark Plan 2019-2036 (2022) (the Local Plan), policy D3 of the London Plan 2021 and Paragraphs 135 and 139 of the Framework. These collectively seek to ensure that development is of a high standard of design and do not undermine the quality of life of neighbouring residential occupiers.

11. The Council's decision notice sets out that the proposal would be contrary to policy D4 of the London Plan (2021). I have not come to this same conclusion, as policy D4 relates to design management procedures and policy guidance for London planning authorities.

Affordable Housing Contribution

12. The proposal would result in a single large new dwelling on the appeal site. As part of their original application the appellant submitted a Financial Viability Appraisal (FVA) based on the dwelling having 11 habitable rooms. This demonstrated that the payment of a commuted payment for affordable housing, as required by Policy P1 of the Local Plan, could not be sustained by the proposal. However, prior to determination of the application by the Council, the commissioning of an assessor to carry out an independent FVA was not progressed.
13. Following the refusal of the application by the Council, and as part of their appeal submission, the appellant subsequently engaged with the council in the commissioning of an independent FVA. This was based on the proposed dwelling having 8 habitable rooms and concludes that a surplus of £41,555 would be generated by the proposal and would be the required level of affordable housing contribution required by Policy P1 of the Local Plan.
14. The main difference between the two assessments appears to be the Alternative Use Value assumptions, based on the refurbishment of the existing house on the appeal plot with the addition of a residential annexe or in the commercial use of the outbuildings on the site. I find, However, that the use of the outbuildings for commercial use is unlikely to be acceptable within the current policy context applicable to the site. There is also very limited information before me to establish whether the refurbished house with large residential annexe alternative is marketable.
15. On this basis, I find that the FVA's have not conclusively established the level of affordable housing contribution that could be sustained by the proposal. The Council have suggested that this could be resolved through a Late Stage Review Mechanism (LSRM) by way of a Unilateral Undertaking (UU) under Section 106 of the TCPA¹. However, the appellant maintains their position that no commuted sum payment for affordable housing is due and that Policy P1 would not support the use of a UU to establish an LSRM to determine a viable affordable housing contribution. As such no completed UU has been submitted by the appellant.
16. The appellant continues to maintain their position that the proposal is a small development and that it should not be burdened by the requirements of Policy P1, and that any affordable housing contribution would not be viable. I find that this has not been established, and with Paragraph 65 of the Framework in mind, the use of a LSRM, by way of a UU, would provide the clarity required. I find that such an approach would be supported by Policy P1, as this would establish firstly whether the proposal could sustain the burden of an affordable housing contribution, and secondly, if able to do so, what commuted sum would be payable.

¹ Town and Country Planning Act 1990

17. Accordingly, I conclude that, in the absence of suitable UU, the proposal fails to establish or secure appropriate affordable housing provision as part of the development, which renders the proposal in conflict with the requirements of Policies P1 of the Local Plan, Policies H2 and H4 of the London Plan and Section 5 of the Framework, which collectively seek to ensure that housing development, including on small sites, meets housing needs.

Other Matters

18. Another main party to the appeal has made a submission Under Rule 6(6) of the Inquiries Procedure Rules². This raises concerns with the scale of the proposal that I have addressed above.
19. I appreciate that the appellant engaged in early and ongoing discussions with the Council, particularly with regard to the character and appearance of the proposal and that the appellant appears to have received positive advice. However, in my experience such advice is usually given without prejudice and cannot pre-determine the outcome of an application.

Planning Balance and Conclusion

20. According to the Housing Delivery Results 2022 the delivery of new dwellings in the Council area are significantly below the required level. The proposal would result in the public benefit of 1 new larger dwelling with 5 bedroom with its own garden, which would be suitable for a larger household. Whilst a single dwelling, albeit a larger one, is a small contribution to the housing shortage, such windfall developments do collectively make a significant contribution to new housing in London.
21. However, with paragraph 11 of the Framework in mind, I find that the substantial adverse impacts of granting permission on the living conditions of neighbouring residential occupiers and the failure to establish or secure appropriate affordable housing provision would demonstrably and significantly outweigh the benefits.
22. The appeal is dismissed.

Victor Callister

INSPECTOR

² The Town and Country Planning (Inquiries Procedure) (England) Rules 2000