



Appeal Decision

Site visit made on 20 February 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2024

Appeal Ref: APP/A5840/W/23/3327180

Flat 1, Kashmir House, 66 Gibbon Road, London SE15 3XE

- 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 Kashmir Atwal against the decision of the Council of the London Borough of Southwark.
 - The application Ref is 22/AP/3401.
 - The development proposed is split of the ground floor and basement flat into 2 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form indicates the proposed development had not started. At my visit I saw that some works pursuant to the sub-division of the existing flat had taken place, but this did not appear to be in accordance with the submitted plans. I have therefore determined the appeal based on the planning application as submitted to and considered by the Council.

Main Issues

3. Having regard to all of the evidence before me, the main issues are:
 - the effect of the proposal upon the supply of family sized homes;
 - whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to the size of the accommodation; private amenity space; levels of daylight and sunlight; and outlook; and
 - whether the proposal would make appropriate provision for affordable housing.

Reasons

The supply of family sized homes

4. The submitted plans indicate that the existing two bedroomed flat comprises accommodation over a basement and ground floor. The net internal floorspace of the existing flat is less than 130m². It is therefore considered as a family sized home under Policy P3 of the Southwark Plan 2022 (SP), whereby subdivision of a single dwelling of 130m² or less is not permitted. The proposal would therefore result in the loss of a family sized home and the creation of two smaller units of accommodation not suitable for families. In such circumstances, the proposal would undermine the Council's ability to meet a high level of need for family homes and would result in the more intensive use of land.

5. The appellant suggests that family housing is of three or more bedrooms, but there is no evidence before me to substantiate this position. The submitted plans demonstrate that the existing two bedroomed flat could accommodate a family. Furthermore, the appellant's estate agent acknowledges that as a property with a rear garden, it is suitable for a young family.
6. The appellant states that the existing location and standard of accommodation is unsatisfactory and cannot be improved, and the proposal would thus fall to be considered under the second part of Policy P3. However, the second part only applies to proposals that would result in a net loss of housing, which is not the case here, as the proposal would result in the net addition of one unit.
7. In any event, the appellant draws my attention to the suitability of the property for family sized accommodation and communications with an estate agent.
8. The appellant suggests that the property would meet a market demand for 1b flats and states that the property has been vacant and unsuccessfully marketed as family accommodation for a period of over six months. However, there is little substantive evidence before me to demonstrate this, including whether any rental prices sought were realistic.
9. While the design of the existing flat is such that it includes two floors with bedrooms to the basement floor, there is no substantive evidence before me to demonstrate that the flat is unsuitable for family accommodation due to any health and safety reason.
10. The property is very close to a rail station, bus stop and a school with a small number of local shops and services nearby. While the location would be suitable for commuters, including professional couples, it would be likewise suitable for commuting by family members.
11. While the property is considered by the estate agent to attract a higher council tax banding and has central heating, there is no substantive evidence before me to demonstrate that the property is unsustainable or costly to run as family sized accommodation.
12. In summary, these matters do not provide compelling evidence to demonstrate that the existing flat does not form family accommodation, nor that it is unsuitable as such, nor unsatisfactory and/or cannot be improved.
13. I therefore conclude that the proposal would result in the loss of a family sized home. The proposal conflicts with Policy P3 of the SP, which seeks to meet the need for family sized homes and protect family housing stock from conversion into smaller homes that would be unsuitable for families. It also conflicts with the objective of the Framework, which seeks to ensure that the housing needs of different groups in the community are met, including the needs of families with children.

Living conditions

14. The main parties are in dispute regarding the number of bedspaces and form of the proposed flats, such that this affects how the proposed accommodation falls to be considered against relevant standards.
15. The Council's Supplementary Planning Document: *2015 Technical Update to the Residential Design Standards 2011* (SPD) takes account of the *Technical*

housing standards – nationally described space standard (THS). Paragraph 6 of the THS sets out that the standard applies when assessing an application, regardless of intended or actual occupancy.

16. The THS makes clear that in order to provide two bedspaces a double bedroom would need to have (among other things) a floor area of at least 11.5m², and this standard is also referenced within the SPD and Policy D6 of the LP. In addition, the SPD sets out minimum room areas for individual rooms, such that a double bedroom in a one bedroomed dwelling requires a minimum size of 12m² and there is no standard for a studio format.
17. The application details before me do not include a schedule of accommodation to include room sizes, but the officer report which considered the application details such a schedule (the Council's schedule).
18. The appellant states that both flats are proposed as 1b/1p units. However, Flat B (the basement flat) is annotated on the proposed plans as a 1b/2p flat with GIA of 50m² and the layout includes a bathroom. The proposed bedroom would be 17.3m² according to the Council's schedule, and this figure is not disputed by the appellant. Therefore, Flat B would fall to be considered as a 1b/2p flat, and the proposed gross internal area (GIA) of 50m² would accord with the required THS and SPD standard.
19. The proposed plans annotate Flat A (the ground floor flat) as a 1b/1p studio flat, with shower room. However, the layout indicates separate rooms and is therefore not a studio format. It therefore falls to be considered as a 1b/2p flat in accordance with table 2 of the SPD and the THS. The Council's schedule indicates a floor area of about 9m², which would be well short of the required minimum area of 12m². The proposed GIA of 37m² would be well short of the minimum requirement of 50m² as set out within the THS and SPD for a 1b/2p flat.
20. Both flats would fall short of the space standard for in-built storage. The Council's schedule indicates that the proposed bathroom for Flat A would be about 2.25m², which would be well short of the SPD requirement of 3.5m². The proposed kitchen/dining/living area serving Flat B would be marginally short of the 24m² standard set out within the SPD.
21. For units of two or less bedrooms, the SPD sets out that ideally 10m² of private amenity space should be provided. Where there are no higher local standards in the development plan, Policy D6 of the LP seeks a minimum of 5m² of private outdoor space for 1-2 person dwellings and an extra 1m² for each occupant.
22. Flat A would be served by an enclosed private amenity space to the front of the property, which would be formed above an existing private courtyard space serving Flat B. In this regard, it would form an outdoor space of about 7.9m², which would be short of the SPD standard. However, due to its form, depth and width it would function as a terrace/balcony and provide a usable space for future occupiers. The Council accepts this provision and I find no reason to consider otherwise.
23. In circumstances where there is a shortfall of outdoor amenity space, the Council seeks a planning obligation to improve open space elsewhere near to the development site, in accordance with the Council's Supplementary Planning Document: Section 106 Planning and Community Infrastructure Levy 2020.

The Council has calculated this contribution and the appellant does not contest this figure. However, there is no mechanism before me to secure this contribution.

24. Flat B would have access to the existing rear amenity space, which according to the Council's officer report is about 23m². In addition, Flat B would also be served by the existing private courtyard, which would be accessed from the proposed bedroom. The Council draws my attention to the fact that the courtyard would be significantly covered by the proposed private amenity space above to serve Flat A, and thus its quality would be diminished. Nonetheless, the private amenity space at the rear would meet the standard within the SPD and Policy D6 of the LP.
25. The SPD sets out that residential development should maximise sunlight and daylight and provide acceptable levels of natural daylight and ventilation to all habitable rooms.
26. The bedroom of Flat B would be served by a large sliding patio door which would also provide access to the enclosed courtyard, which would be significantly covered by the proposed terrace/balcony area to serve Flat A. The patio doors would be capable of being opened to a significant degree (beyond at least 5% of the internal floorspace as required by the SPD), but the bedroom of Flat B would receive very limited levels of daylight and sunlight, even with the proposed lightwell.
27. Furthermore, the patio doors would be the only window providing an outlook from the bedroom to Flat B, providing a view towards the enclosed space. Due to the proximity and height of the existing walls surrounding this enclosure, together with the proposed enclosure above, the outlook from this window would be uninviting, with little in terms of views.
28. Taking account of all of the above, the proposal meets some of the required standards, but fails to meet all of them. I therefore conclude that the proposal would not provide acceptable living conditions for future occupiers, with particular regard to the size of the accommodation; private amenity space; levels of daylight and sunlight; and outlook. The proposal conflicts with Policy P15 of the SP, Policy D6 of the LP and the SPD. Taken together, these policies and guidance seek to ensure that housing development is of high-quality design, with comfortable and functional layouts which are fit for purpose, in accordance with defined standards.
29. The proposal also conflicts with the provisions of the Framework which seeks to ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Affordable Housing

30. The supporting text to Policy P1 of the SP makes clear that there is a shortage of social rented and intermediate homes in Southwark and that this is the Council's priority in the delivery of new homes. The SP sets out that approximately 71% of Southwark's total housing need is for social rented and intermediate homes, affordable housing provision is required from all developments. Policy P1 therefore seeks to address the shortage of social rent and intermediate homes within the borough.

31. In essence, the policy seeks affordable housing provision on or off site, and in certain circumstances, a financial contribution can be accepted in lieu. The policy also sets out that viability appraisals and reviews are required for all developments and published for public scrutiny.
32. The proposed development would deliver a net additional unit, from a scheme of nine or fewer homes, and therefore clause 2 of Policy P1 applies, which sets out that such development 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 as set out in Table 1."*
33. The viability statement submitted with the application and the appellant's submissions suggest that the development would not be required to address affordable housing provision. However, the viability statement does not include any financial information upon which to assess viability and fails to comply with the methodology set out within the Council's guidance¹. No further information has been submitted to the appeal to detail viability. I note that the appellant chose not to pursue an independent review on the basis that a refusal was considered likely and in light of other matters. Nevertheless, there is no viability assessment or independent review before me.
34. The appellant states that they may wish to offer the additional unit as an affordable rental unit, but there is no mechanism before me to secure this, nor any confirmed interest from a provider. The Council has calculated a financial contribution for an alternative fast track route and this figure is not disputed by the appellant. However, there is no proposed mechanism before me to secure such a contribution.
35. The appellant draws my attention to the Council's Supplementary Planning Document: Affordable Housing 2008. However, this document relates to a policy within the 2007 version of the SP and does not apply to schemes of less than 10 units. Therefore, this document is not relevant to the proposal before me.
36. The appellant advises that the appeal site once formed part of a public house which was converted and extended to form flats, pursuant to planning application Ref: 00/AP/0590, granted 06 July 2000. In this regard, the appellant states that affordable housing contributions were made as part of the conversion scheme when the former public house was converted to form flats. However, this is undemonstrated. Moreover, of itself, it does not set aside the present policies of the development plan with regard to this issue.
37. In the absence of a viability assessment, independent review and a means of securing a contribution, I conclude that the proposed development would not make appropriate provision for affordable housing. The proposal conflicts with Policy P1 of the SP (whose objectives I have set out above), and Policies H2 and H4 of the LP, which when taken together, seek to diversify the type and mix of housing supply, and make suitable provision for affordable housing. The proposal also conflicts with the objective of the Framework, which seeks to ensure that that needs of groups with specific housing requirements are met, including those in need of affordable housing.

¹ Supplementary Planning Document: Development Viability 2016

Other Matters

38. The appellant draws my attention to two examples of conversions in support of the proposal. Planning application ref 21/AP/2315 concerns the conversion of a 1b/2p flat into a 2b/4p flat. Planning application ref 18/AP/2732 concerns a certificate of lawfulness for the conversion of two flats into a 4b dwelling house. In this regard, these examples are not directly comparable to the scheme before me as they do not relate to subdivision and/or a net loss of units.
39. The proposed development would provide an additional dwelling in an accessible location and contribute to the supply of land for homes. It would provide accommodation suitable for those groups in need of smaller units of accommodation; and support the efficient use of land. As a small site it could be delivered quickly. Given the small scale of the scheme as a whole, these benefits attract limited weight in favour of the proposal. However, they would not outweigh the harm that I have found in respect of the main issues.
40. The appellant suggests that the existing flat has been vacant for over six months, and therefore the loss of Council Tax receipts during this period and/or receipts from future occupiers is a matter that would weigh in favour of the scheme. It is unclear how additional Council Tax receipts as a result of the proposal would be used so as to benefit the general public. Therefore, any advantages in these respects would be of very limited weight and would not outweigh the harms that I have found.
41. Matters pertaining to the handling of a planning application have no bearing on my findings regarding the main issues and/or the planning merits of the scheme.

Conclusion

42. For the reasons given above the appeal should be dismissed.

J Moore

INSPECTOR