The Planning Inspectorate

Appeal Decision

Hearing Held on 17 April 2024

Accompanied Site visit made on 18 April 2024

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 7 June 2024

Appeal Ref: APP/A5840/W/23/3336060
19 – 49 (known as 19A) Bush Road, London SE8 5AP

- 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 James Chell (Bugler Developments Ltd) against the decision of the Council of the London Borough of Southwark.
- The application Ref 19/AP/2544, dated 9 August 2019, was refused by notice dated 29 June 2023.
- The development proposed is the demolition of all existing buildings; construction of 2no. three storey blocks and 2no. part three and part four storey blocks containing 36no. self-contained flats comprising 15no. one bedroom units, 14no. two bedroom units and 7no. three bedroom units; closure of northern access from Bush Road; and provision of associated landscaping, parking and turning areas.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. The parties were provided with an opportunity at the Hearing to comment on the revised Framework, and their comments have been taken into account in my decision.

3. Prior to the Hearing the appellant accepted the Council's position in respect of: CIL and s106 financial contributions; land acquisition legal fees; and affordable housing disposal legal fees insofar as they relate to the benchmark land value of the site. As such, these matters are no longer in dispute.

4. A Unilateral Undertaking was completed and provided prior to the Hearing and subsequently amended after the Hearing closed. I will address this later in the decision.

Main Issues

5. The main issues are whether the proposal: (i) makes adequate provision for affordable housing, taking account of the viability of the development; and (ii) represents a suitable housing mix.

Reasons

Affordable Housing

6. The appeal site is a triangular area of land of approximately 0.79 acres located to the rear of Nos. 19-49 Bush Road in an area that, although featuring a range of uses, is predominantly residential in nature. The site is currently in use as a plant and machinery hire business, comprising primarily open storage with a range of buildings to support the current use. The proposal seeks to erect 36 self-contained flats.

7. Policy P1 of The Southwark Plan 2019 -2036 (the Southwark Plan) states that development that creates 10 or more homes must provide the maximum viable amount of social rented and intermediate homes. The minimum amount should be 35%. The appellant's position is that the proposal can provide a maximum of 5 shared ownership dwellings.

8. In respect of viability, the main parties disagree about certain inputs into the financial viability assessment. The disputed inputs are: benchmark land value (BLV); developer return; construction costs; and development phasing. The Council further advocates a 'stand-back approach' in assessing the residual land value.

Benchmark Land Value

9. The Government's recommended approach to defining key inputs in a viability assessment is set out in National Planning Practice Guidance (the PPG). It states that to define land value for any viability assessment, BLV should be established on the basis of an existing use value (EUV) of the land plus a premium to the landowner, known as the existing use value plus (the EUV+). The main parties have concluded different BLVs for the site, with the appellant coming to a figure of £2,550,000, compared to the Council's £1,550,000.

10. The EUV is the value of the land in its existing use. At the Hearing the Council highlighted that the appellant had not provided information on the price they were to pay for the land, which the Council stated would be a useful indication of the EUV. However, while the PPG states that the Council may request such data, there is nothing to compel the appellant to provide this information and, in any event, the PPG is clear that the EUV is not the price paid for the land and should disregard hope value. I have proceeded on this basis.

11. In establishing the EUV, the main parties have both used a rent and yield approach, with the appellant concluding a rental value of £4.75 per square foot and the Council citing a rental value of £3.75 per square foot. The appellant argues that a two-tier approach exists for open storage rental values, with those in or close to central London and under 1 acre warranting higher rent than larger sites closer to the motorway network. This is stated to be due to a demand resulting from a shortage of supply in this area and a desire to be closer to the customer base. I have no substantive reason to disagree that this would be the case, and further note the acknowledgement of the Council that such rental values have increased in recent years, leading to an uplift from its original quote of £3.50 per square foot.

12. However, I find the argument of the Council that rental values would also be influenced by the condition and specifics of the site to be reasonable. Although centrally located, I observed the site to be in a confined, backland position

surrounded by residential development. While a vehicular access exists, the irregular shape of the site would limit turning space, such that it would not be accessible by all types of delivery vehicles. In addition, although certain buildings are present on site, the current condition of these varies. It is reasonable to conclude that these factors would have an impact on the rental value that the site could achieve as open storage land.

13. The PPG is clear that sources of data for EUV can include real estate research. Both parties draw wide reference to rental evidence both close to central London and further afield to support their valuations. The most up to date examples provided by the appellant include sites at Herne Hill and Kentish Town, both noted as similar in size and location to the appeal site.

14. In addition to open storage, the Herne Hill site contains open sided arches. The general principle that such a feature would attract a higher rental value was discussed at the Hearing. While a rental value of £5.60 per square foot is quoted for this site, there is no information on the extent of open storage to be certain as to how this would impact the quote. Although the Kentish Town site is said to be 8,535 square feet of offices and 1,311 square feet of open storage, limited justification is provided for the figure of £5.71 per square foot allocated to the yard and £20.00 per square foot allocated to the offices by the appellant, when compared to the quoted rent of £75,000 per annum exclusive.

15. While many of the examples cited by the Council are located some distance from central London, reference is made to two sites at Bermondsey Junction, located close to the appeal site. These are larger than the appeal site and comprise storage with arches, but clear information is set out on the amount of open storage land provided compared to arches, such that it is clear that a sizeable portion of open storage is present. In addition, gated access, power, water and capped foul drainage serving the sites is acknowledged. A rental value of £3.00-£5.00 per square foot on a short-term letting and £5.00-£7.00 per square foot for a long-term letting of these sites is quoted.

16. Numerous other examples of rental evidence have been submitted by both parties, to which I have had regard. It is difficult to draw precise parallels between these and the appeal site as the size, nature and location differ to varying degrees. However, due to their comparable location to the appeal site and the clarity of the information provided on their nature, I find the Bermondsey Junction examples to be compelling evidence. The heightened condition of these and the presence of the arches suggest that the appeal site would attract a rental value some way below that quoted for these locations.

17. Accordingly, despite its central location and the demand in the area for open storage, I am not persuaded that the site would have a rental value of the level quoted by the appellant. Even acknowledging that the appellant has not applied an uplift to its original cited figure, on the evidence before me and my observations on the specific nature of the appeal site, I find that a reasonable rental value for this site would be closer to that quoted by the Council.

18. The main parties also disagree on the yield that should be applied to the financial viability assessment, with the appellant providing a figure of 6% and the Council a figure of 8%. To support their arguments the main parties have again provided transactional evidence for a range of sites in various locations, to which I have had regard. However, it is noted that evidence of investment

sales for open storage land are limited and as outlined above it is difficult to draw precise parallels between the sites quoted and the appeal site.

19. Nevertheless, the evidence of the Council suggests there has been a shift in investment yield in the market over the previous years. Even acknowledging the most up to date comparable sales evidence provided by the appellant, the appellant's quoted yield for the site has remained at 6% since the time of its application. This does not appear to reflect the market evidence that this figure should have increased, and I am more inclined to accept the Council's position regarding the yield that should be applied.

20. It is also necessary to apply a landowner's premium to arrive at the BLV by way of EUV+. The PPG states this should reflect the minimum return at which the landowner would be willing to sell their land. This should provide a reasonable incentive to sell the land for development and allow a sufficient contribution to fully comply with policy requirements. In accordance with the PPG the premium is added to the established EUV to arrive at the EUV+. Further, the guidance in the Mayor of London Homes for Londoners Affordable Housing and Viability Supplementary Planning Guidance 2017 (the MfL SPG) suggests the premium could be 10-30% but must reflect site specific circumstances.

21. The appellant has applied a premium of 15% in its financial viability assessment. It justifies this approach by acknowledging that the site is not a fully let office block or food store on a long-term lease to a national tenant, such that it would be in the lower end of the 10-30% scale. However, the appellant recognises that at present the site does have a longstanding market use and functions as an asset within the local context, thereby arriving at a premium level above the minimum amount of the scale.

22. The Council has outlined its suggested premium in a different manner, through referencing the market yield value of the site and a stand-back approach to present an EUV of £1,350,000 and an EUV+ of £1,550,000, being a premium of some 14%. However, the landowner premium is a separate point to the market yield of the site. I agree with the appellant's discussion at the Hearing that to conflate the two would be contrary to the guidance of the PPG, which assesses the EUV as the first component of the BLV and then the premium as a separate, second component. On this basis, I accept the position and justification of the appellant for a premium of 15%.

23. With regard to BLV, I accept the appellant's position regarding the appropriate level of landowner premium. Nevertheless, I am not persuaded by the appellant's figures with regard to the rental value and yield.

<u>Construction Costs</u>

24. The appellant provided a cost estimate in 2021 that concluded a total construction cost of £8,764,182. It was discussed at the Hearing that this was accepted on balance by the Council at that time. However, while the appellant's latest 2023 cost estimate results in a total construction cost of £11,339,312, the Council argues a figure of £10,057,000 to be more realistic.

25. The appellant states that the market has gone through a period of significant build cost inflation due to COVID-19, the energy crisis, and global conflicts and that although prices are beginning to stabilise, tender prices nevertheless

remain high. In addition, it was discussed that changes were required to the scheme to reflect the 2023 uplift in construction costs, namely due to the updated changes to Part L of the Building Regulations in June 2022 which provided higher performance targets. I find these arguments to be reasonable, such that simply adjusting the 2021 cost estimate to account for inflation may not be appropriate. Nevertheless, I have limited detailed justification for the precise level of uplift in costs cited by the appellant.

26. The 2021 estimate states site specific abnormal costs were considered at this stage, to include energy compliance with centralised air source heat pump, PV solar installation, and MVHR ventilation systems. Even acknowledging that the appellant's 2022 Energy Statement cites an increased size of PV array in addition to other changes such as enhanced insulation, given that energy compliance was taken into account in the 2021 estimate, limited substantive justification for the level of increased costs has been provided. This is also the case for the appellant's argument that enhancements were made to Urban Greening. In addition, the appellant's estimate for Specialist Foundations has increased by 35% and Lowest Floor Construction by 42%, but piled foundations were already noted as an abnormal cost in the 2021 estimate.

27. Recent tender returns/ contract awards have been provided by the appellant showing a similar cost per unit and square metre when compared to the proposal. However, while the supply chain and net cost of developments may not vary on the basis of location, it remains that I have limited information on the precise comparability of these schemes and the proposal, such that I can afford this little weight. Even noting the market changes and updated Building Regulations, I am not satisfied that the updated construction cost figure is a reasonable and realistic estimate to input in the financial viability appraisal for the scheme.

Developer Return

28. The PPG states that for the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies. While this relates to the plan making stage, it nevertheless provides an indication of an appropriate level of developer return for the purposes of a scheme's financial viability assessment. The main parties agree on a developer return of 6% on the GDV in respect of the affordable housing units. However, for private residential sales, the Council cites 15%, while the appellant states 17.5%.

29. In this respect, the GDV of the private residential element of the scheme is agreed between the parties. However, the Council alleges that the internal rate of return (IRR) of the scheme would be higher than expected for developments of this type when using the figures provided by the appellant. This point was discussed at the Hearing, during which the appellant highlighted that the use of IRR is suitable for larger scale developments, and would not usually be applied to schemes of the level proposed in practice. Rather, the appellant has proceeded on the basis of a profit on the GDV only.

30. The appellant's approach reflects the reference to profit on GDV within the PPG, using a figure that falls within the PPG 15-20% range. In addition, the New Southwark Plan Evidence Base: Housing Policy Viability Update Study November 2017 acknowledges developer return of 17-20% in 2017. While this is some time ago, given the change in the economic situation since,

accounting for inflation and rising costs, an appropriate level of return would currently be unlikely to be below that range.

31. For these reasons, I find the appellant's position on developer return to be more persuasive. The Council has also stated that land evidence within a stand-back assessment suggests the appellant's return level is too high. I address the stand-back approach later in my decision.

Development Phasing

32. The overall development timings are agreed between the main parties. However, the Council is of the opinion that a phased development could occur, serving to reduce finance costs and thus impact on overall scheme viability.

33. The proposal would construct separate apartment blocks with two entrances to the site. However, given the overall limited scale of the 36 unit proposal and the confined nature of the appeal site, I agree with the appellant that it is reasonable to assume a phased scheme of development would not be implemented. It was discussed at the Hearing that such phasing would not be the usual approach for schemes of this size. A 24 month build programme for the totality of the proposal appears to be a reasonable assumption, in addition to being the most efficient and practical approach for a scheme of this nature at the site.

Stand-back Approach

34. The PPG states a viability assessment looks at whether the value generated by a development is more than the cost of developing it. The main parties agree with the principle of establishing a residential land value on this basis.

35. The Council points to the Royal Institution of Chartered Surveyors Guidance Note Assessing viability in planning under the National Planning Policy Framework 2019 for England (the RICS Guidance), and its reference to a further stand-back assessment of the appraisal output to review the residual land value against land sales evidence. It is further highlighted that the reference to this approach is cited in the Southwark Council Development Viability Supplementary Planning Document March 2016 (the SPD) and the Mayor of London, London Plan Guidance Development Viability Consultation Draft May 2013 (the LPG Consultation Draft). The appellant is of the opinion that this additional step is not required.

36. The SPD represents local guidance, rather than policy, and the LPG Consultation Draft remains a draft document, such that I afford these documents little weight. The PPG is nationally recognised as the Government's recommended approach to viability and makes no reference to either the RICS Guidance or the stand-back approach within its residual land appraisal approach. In any event, I have already found there to be issues with inputs provided by the appellant on BLV and construction costs. As such, I do not consider that a stand-back assessment is required in this specific instance.

Affordable Housing Mix

37. Policy P1 of the Southwark Plan sets out an affordable housing mix of 25% social rented homes and 10% intermediate homes. Accompanying text explains that there is a shortage of social rented and intermediate housing in Southwark such that they are a priority in housing delivery.

38. The proposal would deliver five shared ownership dwellings. It would not provide any social rented homes, failing to address the evidenced, acute need for this type of affordable housing, or to deliver on the Council's stated priorities with regard to housing delivery. As such, it would fail to provide a policy compliant mix if affordable housing.

39. The appellant has suggested that to prioritise the delivery of social rented units at the site, the overall level of affordable housing that could be delivered would be reduced, referring to an alternative scheme that would provide 2 social rented units and 1 intermediate unit. However, this is not the proposal before me, nor is it the scheme on which the Council based its decision, such that I have not taken this into account in my assessment. Even if I were to take this alternative mix into account, it remains that the development appraisal for this relies on inputs that, as addressed above, I have found a lack of justification for. Policy P1 of the Southwark Plan remains clear on the level and mix of affordable housing that should be achieved, which the proposal before me would fail to meet.

<u>Conclusion on First Main Issue</u>

40. The Framework sets the weight to be given to viability assessment as a matter for the decision maker, having regard to the circumstances of the case. I have found the financial viability assessment inputs of the appellant regarding development phasing, developer return and landowner premium to be reasonable. However, I do not agree with its position on the EUV of the land with regard to the cited rental value and yield such that I do not find its BLV figure to be tenable. I have further found a lack of justification for the uplifted construction costs quoted by the appellant. Therefore, overall I am not satisfied that the viability assessment is accurately represented. In addition, the proposed affordable housing mix would not be policy compliant.

41. I conclude that the proposals would not make adequate provision for affordable housing, taking account of the viability of the development, in conflict with Policy P1 of the Southwark Plan.

Housing Mix

42. Policy P2 of the Southwark Plan states that major residential developments must provide: a minimum of 60% of homes with 2 or more bedrooms; and, in the suburban zone, a minimum of 30% of homes with 3 or more bedrooms. The proposal is in the suburban zone and would provide 58.3% of homes with 2 or more bedrooms and 19.4% with 3 or more bedrooms.

43. I acknowledge that the appeal site is on the edge of the urban zone and in an area of mixed uses. However, the proposal would also fail to meet the requirement for 25% of homes with 3 or more bedrooms in the urban zone.

44. The appellant refers to site specific constraints to justify its approach, citing the confined nature of the appeal site and the requirements for adequate separation distances, access, private amenity space and circulation space as limiting the potential to deliver larger units at the site. Nevertheless, there is limited information before me to conclusively determine that a policy compliant scheme could not be achieved at the site through an alternative layout or quantum of units. Further, while the appellant alleges that the

location of the site would be more attractive to smaller households, there is nothing to suggest that this would exclusively be the case.

45. Although I note the Council indicates an on-balance approach could have been taken to housing mix if a policy compliant amount of affordable housing was proposed, for the reasons set out above that is not the case here.

46. For the reasons given, the proposal would not represent a suitable housing mix. As such, it would be contrary to the requirements of Policy P2 of the Southwark Plan insofar as it seeks to ensure that development responds to identified housing needs.

Planning Obligation

47. The Unilateral Undertaking provides a mechanism to secure the provision of affordable housing and contributions towards carbon offset and play space. There is also a requirement for the provision of highways works and the monitoring of 'Be Seen' energy performance indicators.

48. I have considered the obligations in the Unilateral Undertaking with regard to the statutory requirements in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and the tests in paragraph 57 of the Framework. I am satisfied that all the obligations are necessary, directly related to the development and fairly related in scale and kind. Accordingly, I consider that these obligations can be taken into account in my assessment of the appeal.

Other Matters

49. The main parties agree that the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years. 36 dwellings would go some way towards housing delivery. The proposal would reuse previously developed land, optimising the use of a small, brownfield site in an established and suitable residential location with good public transport links. The dwellings would comply with national space standards and benefit from both private and communal amenity space, and would include family homes, affordable housing and a policy compliant level of accessible dwellings, contributing to the housing mix and choice.

50. The proposal would deliver biodiversity net gain through the inclusion of bat boxes/ tubes, nesting boxes, and brown roofs, while the brown roofs and other soft landscaping would increase urban greening. In addition, there would be sustainability benefits including on-site energy generation, a 95% carbon reduction over Part L of the Building Regulations and a carbon offset payment, with the proposal also serving to enhance the current condition of the appeal site from a design perspective. It would also have social and economic benefits and contribute to the local economy in providing construction jobs, and new customers to surrounding shops thus enhancing and maintaining the local services. Contributions to play space, and the provision of highways works would also provide benefits to the wider community. The provision of 36 dwellings in the way proposed would go towards previous delivery shortfalls and together with the other social, economic and environmental benefits weigh in favour of the proposal.

51. The appellant has referred to other development and appeal decisions where a lack of viability, acceptance of lower profit by the developer, and a housing mix that departs from Policy P2 of the Southwark Plan have not resulted in the dismissal of

schemes. However, I have limited precise information before me on the nature of such other development or its comparability to the appeal proposal. In any event, each scheme is decided on its own site-specific circumstances and reference to development elsewhere carries little weight.

Planning Balance and Conclusion

52. The proposal would fail to make adequate provision for affordable housing and would not provide a suitable housing mix. There would be conflict with Policies P1 and P2 of the Southwark Plan. The proposal would not accord with the development plan as a whole and this counts significantly against allowing the appeal.

53. However, the government's objective is to significantly boost the supply of homes. Other policies of the Framework give support to the development of brownfield land within settlements and acknowledge that small sites can make an important contribution to meeting the housing requirement. Other parts of the Framework also support economic, social and environmental benefits. In Southwark there is a lack of delivery of housing and because of this, paragraph 11(d) of the Framework is engaged.

54. The Framework requires that the size type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies and that the needs of groups with specific housing requirements are addressed. Although there is considerable support in the Framework for new housing, to which overall I give moderate weight, there is clearly a need within Southwark to address an acute need for social rented housing and a high requirement for intermediate housing which, due to the overall quantum and mix of affordable housing proposed, the development fails to do. I give this matter significant weight.

55. Therefore, even taking account of all other matters outlined above, the adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

56. The proposed development would be contrary to the development plan and there are no other material considerations, including the provisions of the Framework, that outweigh this finding. Therefore, I conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR

APPEARANCES

FOR THE APPELLANT

J Chell	Bugler Developments Ltd
A Evans	ROK Planning
R Ashdown	ULL Viability
P Mack	Silver DCC

FOR THE LOCAL PLANNING AUTHORITY

A McGovern	Council of the London Borough of Southwark
J Kut	Cluttons
L Quinn	Cluttons
L McKenna	Avison Young

DOCUMENTS AND PLANS SUBMITTED AFTER THE HEARING

- Amended Unilateral Undertaking dated 16 April 2024;
- ULL Property Bush Road Appraisal, Rebuttal March 2024;
- Mayor of London Homes for Londoners Affordable Housing and Viability Supplementary Planning Guidance 2017;
- Mayor of London London Plan Guidance Development Viability Consultation Draft May 2023;
- New Southwark Plan Evidence Base: Housing Policy Viability Update Study November 2017;
- Royal Institute of Chartered Surveyors Assessing Viability in Planning under the National Planning Policy Framework 2019 for England;
- Royal Institute of Chartered Surveyors Financial Viability in Planning Conduct and Reporting May 2019;
- Royal Institute of Chartered Surveyors Valuation of Development Property October 2019;
- Southwark Council Development Viability Supplementary Planning Guidance March 2016;
- Viability Figures April 2024.