The Planning Inspectorate

Appeal Decision

Site visit made on 28 May 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 JUNE 2024

Appeal Ref: APP/A5840/W/23/3326266
95A Talfourd Road, London SE15 5NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr J Milne of RG Airspace Developments Limited against the decision of the Council of the London Borough of Southwark.
- The application Ref is 22/AP/1184.
- The development proposed is loft extension to provide one two bed, three person flat with associated amenity space.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the development could make provision for a contribution to social rented and intermediate housing.

Reasons

3. Paragraph 65 of the National Planning Policy Framework (the 'Framework') states that provision for affordable housing should not be sought on developments that are not major developments[1]. Policy H4 of the London Plan 2021 is consistent with this in that it requires all major developments to provide affordable housing. But it adds that some Boroughs may require affordable housing contributions from minor developments.

4. Insofar as it relates to this proposal, Policy P1 of the Southwark Plan 2022 says that development that creates 9 homes or fewer must provide a financial contribution towards the delivery of social rented or intermediate houses equivalent to a minimum of 35%, subject to viability.

5. London Plan policy H2 sets targets for developments of small sites[2] in each borough, with Southwark having one of the highest targets in London. Were paragraph 65 of the Framework to be applied rigidly, it would mean that all of these developments of small sites would not be required to make any contribution to affordable housing. Nearly three quarters of the Council's total housing need is for social rented and intermediate housing, and the delivery of this would be significantly affected if contributions could not be sought by developments on small sites. Moreover, policy P1 was adopted at a time when policy H2 and the Framework policy were already in place, which suggests the examining Inspector, whilst mindful of those policies, considered local

[1] 10 or more units or sites of 0.5 hectares or greater
[2] Less than 0.25 hectares

circumstances warranted a different approach. I therefore give greater weight to policy P1 than to the Framework and consider that the development is eligible to make a contribution.

6. The required contribution is subject to viability. The appellant and the Council have both provided viability assessments. The appellant's assessment calculates that no contribution is viable, whereas the Council's calculates that a commuted payment of around £71,000 is viable. There are a number of differences to the constituent parts of the assessments which explain the differing conclusions which I address below.

7. Regarding Benchmark Land Value (BLV), the parties agree that as the site currently comprises loft space, there is no meaningful existing use value. However on a 'stand back' judgment the appellants consider that £50,000 is a reasonable figure to incentivise a landowner to sell, whereas the Council value it on the same basis at £20,000. As set out in the national planning practice guidance (PPG), BLV should primarily be based upon existing use value, plus landowners premium and allowing for any abnormal costs, site-specific infrastructure costs, and professional fees. As it is an existing roofspace in a residential building, albeit one that is subdivided into flats, I would consider such costs and fees to be minimal.

8. The appellant advises that a landowner would not sell it at £20,000 in the knowledge that it would have a potential value as a separate flat of around £500,000. However this is an Alternative Use Value (AUV). The PPG states that if an existing use will be refurbished or redeveloped, as in this case, this will be considered as an AUV. The PPG adds that if AUV are to be considered, these should be limited to those uses which would fully comply with up to date development plan policies, including those for contributions towards affordable housing. Both party's assessments demonstrate that the use of the site as a separate flat could not provide the full 35% contribution required by policy P1. Therefore the AUV should not be used. Overall, accounting for its nominal existing use value, limited fees and costs, and even allowing for a landowner's premium, I would consider £20,000 to be the more reasonable figure.

9. Turning to developers return, the PPG advises that a rate of between 15% and 20% of Gross Development Value is reasonable, although I recognise this advice dates from 2019. The appellant considers that the project is high risk, in terms of potential structural implications and restricted access, and so should be 20%. However whilst I note access to the rear is limited, access is achievable unlike many terraced properties nearby. Furthermore, there is no evidence of any structural implications. As such, I consider the loft conversion and small-scale extension would not be high risk. Whilst development risks may have increased since 2019, a figure of 20% seems excessive and the Council's figure of 17.5%, whilst conservative, is more reasonable.

10. In view of the above, even if I were to accept all the other costs provided by the appellant, including construction costs, professional fees, and the costs of financing, which would amount to roughly £370,000, and their estimated Gross Development Value of £490,000; I consider a contribution towards social rented and intermediate housing, of around £15,000 could be made. Consequently I am not satisfied that a contribution, albeit not a fully policy compliant one, is unviable. As such the development would not accord with policy P1.

11. I have been provided with copies of some other appeal decisions which discussed affordable housing contributions. All cases should be determined on their own merits, and I am not party to the information provided in those cases. Nonetheless, I note that in two of those cases it was demonstrated that it was unviable to provide contributions even with a much lower rate of developers return than the 20% suggested in the scheme before me, and in the other case the failure to provide affordable housing was not disputed by the Council. As such they are not comparable to the current appeal.

Other Matters

12. The appellant has drawn my attention to the fact that the latest Housing Delivery Test results show the Council have failed to deliver 75% of their housing requirement over the last 3 years. As such, paragraph 11d) of the Framework applies and planning permission should be granted unless the adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.

13. The provision of one flat would be of benefit at a time when the Council is not delivering sufficient volumes of housing, and this would align with the aims of paragraph 60 of the Framework. Similarly the development would reflect the guidance in paragraphs 123 and 124 which support a more effective use of land, particularly the airspace above existing residential premises for new homes. I give substantial weight to this.

14. On the other hand, paragraph 64 of the Framework requires contributions to affordable housing to be required where a need is identified. To my mind the failure to provide any contribution to affordable housing, when the need for such units is so great, carries considerable weight.

15. When considered against the Framework as a whole, I consider the adverse effect of granting permission would significantly and demonstrably outweigh the benefits. The presumption in favour of sustainable development does therefore not apply.

Conclusion

16. The proposal would fail to accord with the development plan as a whole and there are no other considerations, including the provisions of the Framework, that indicate a decision other than in accordance with the development plan. Therefore the appeal is dismissed.

A Owen

INSPECTOR