The Planning Inspectorate

# Appeal Decision

Site visit made on 29 April 2024

**by Robin Buchanan BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14th June 2024**

**Appeal Ref: APP/A5840/W/23/3333639**
**157 Dunstans Road, London SE22 0HB**

- 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 Lakh Kallar of Dunstans 7 Limited against the decision of the Council of the London Borough of Southwark.
- The application Ref is 23/AP/1082.
- The development proposed was described as 'erection of two semi-detached houses and garden room/storage'.

## Decision

1. The appeal is dismissed.

## Application for Costs

2. An application for costs was made by Mr Lakh Kallar of Dunstans 7 Limited against the Council of the London Borough of Southwark. It is the subject of a separate Decision.

## Preliminary Matter

3. In December 2023 the Government published a revised National Planning Policy Framework (NPPF). I have referred to updated paragraph or footnote numbers as necessary.

## Background and Main Issue

4. Prior to the Council's decision the appellant settled on a 'fast track' route for 40% provision of affordable housing (AH) and its estimate of a £280,000 financial contribution in-lieu of providing AH on site. No planning obligation to secure this, or any such payment was submitted to the Council. The Council said the fast track contribution was £320,000 then £350,000.

5. In this appeal the Council considers the contribution is £400,000. The main parties agree that 40% of the proposed 10 habitable rooms is 4 and that the Council has multiplied this by £100,000 per habitable room (PHR) to derive this payment. The appellant wants to maintain the fast track route but there is no planning obligation before me to secure any AH financial contribution, so it is also not clear to me what payment is apparently intended. In any event, and notwithstanding this, the appellant also refers to absence of £100,000 PHR in any development plan policy and maintains that there is no up-to-date justification for this figure.

6. It is common ground that Policy P1 of the Southwark Plan February 2022 (SP) does not include £100,000 PHR or any other PHR figure, nor do Policies H2 or

H4 of the London Plan March 2021 (LP). However, that is not the same as that there is no development plan basis for a £s PHR figure in an AH financial contribution or that a £s PHR figure is not informed by a recent Council evidence base, as the appellant contends.

7. Taking account of this background, the main issue in this appeal is whether there should be a financial contribution towards the provision of AH and, if so, would the proposal make such a contribution.

**Reasons**

8. The Council's officer report refers to SP Policy P1 but gives no explanation or justification of £100,000 PHR. Its appeal statement links this figure to location of the appeal site within CIL Zone 1, as does a June 2023 screenshot of the Council's website for CIL Zone 1 and 2. None of this particularly assists me.

9. The Council has an adopted Affordable Housing Supplementary Planning Document September 2008 (SPD). The site is in Value Area 3 and the SPD gives an explanation and justification for £80,000 PHR. Albeit that the SPD was prepared in the context of a previous development plan AH policy engaged at a threshold of 10 or more homes, some purposes of the SPD were to make sure this policy achieved its objectives, including in-lieu financial contributions secured by a planning obligation, and to set out issues that the Council would consider in making decisions on planning applications. The Council's draft Affordable Housing Supplementary Planning Document June 2011 (draft SPD) includes an explanation and justification for £100,000 PHR, including cross-reference to a supporting Council viability testing document. This guidance is draft and without public consultation, so it has no weight in this appeal.

10. A £100,000 PHR figure was endorsed by the Council's Cabinet in March 2024 in a draft S106 and Community Infrastructure Levy Supplementary Planning Document (draft S106SPD). I have not been provided with a copy of it, just the Viability Assessment December 2023 (VA) that informed it. The VA provides an up-to-date explanation and justification for a CIL Zone 1 and 2 small site fast track £100,000 PHR in the context of SP Policy P1 and LP H4 (thus LP Policy H2). The draft S106SPD was to be consulted on and I have not been informed it has been adopted in a final form, so it has no weight in this appeal.

11. LP Policy H4 aims to deliver AH housing in major developments, including by a financial contribution in lieu of provision on site. It also sets out that boroughs may require AH contributions from minor housing developments under LP Policy H2, which seeks to increase housing delivery from small sites. This is reflected in SP Policy P1. It includes that developments of less than 10 homes can make a minimum 35% financial contribution towards the delivery of AH subject to viability and requires viability appraisal for all developments except fast track proposals providing 40% AH. Where AH is not provided on or off site by a developer (as in this case) the policy requires a financial contribution based on the relevant 35% or 40% proportion of the number of proposed habitable rooms.

12. By these words SP Policy P1 sets out clearly an NPPF paragraph 34 approach to a 'level' of AH provision required, in this case by a fast track financial contribution mechanism. The supporting text confirms that this payment should be secured with a planning obligation. There is nothing in NPPF paragraph 34 to the effect that a development plan policy must, or can only, 'set out the

contribution expected from development' if it contains the actual contribution or an entire calculation, in this case expressed as or informed by a £s PHR figure, as the appellant otherwise suggests.

13. The NPPF glossary confirms that SPDs (so implicitly an underpinning evidence base) add further detail to policies in the development plan and can be used, amongst other things, to provide guidance for development on particular issues. In addition, that while not part of the development plan, these documents can be a material consideration in planning decisions. There is no evidence it is impermissible for all or part of a tariff based calculation (such as in this case a £s PHR figure used to establish the monetary size or value of a financial contribution) to reside in an SPD, or its supporting evidence base or in a development plan supporting evidence base; as opposed to, and distinct from, the level of AH provision required that in this case exists in a governing or parent development plan policy. In my experience this is usual and common.

14. NPPF paragraph 33 intends development plans to endure for up to five years before review is considered. The absence of a £s PHR figure embedded in SP Policy P1 was evidently, and despite the appellant's largely anecdotal or speculative claims, not a concern to the examination Inspectors. In the context of (the same 2019) NPPF paragraph 34 and relevant Planning Practice Guidance (PPG)[1]. They agreed the plan would 'either provide the outline of the approach/formula the Council will take and/or make clear reference to detail being set out in an update to the S106/CIL SPD'. That is precisely what has happened and this extract does not require the Council to commit the entire detailed calculation into SP Policy P1. It did not undermine deliverability of an otherwise sound plan approach to the provision of AH on small sites.

15. The absence of a £s PHR figure fixed in the SP in 2022, or that the examination Inspectors 'did not state or impose' a monetary value as part of SP Policy P1, is also unsurprising because it would not give flexibility to adjust this figure outside of the cycle of plan preparation, consistent with aims of the NPPF glossary definition for SPDs. It could otherwise potentially diminish the 'real terms' value of an AH contribution.

16. Some Council viability evidence base documents that I have been referred to by the appellant were published in 2019 and 2021. They were, therefore, NPPF paragraph 31 contemporary to the examination of the SP in 2021 and it is still a relatively recently 2022 adopted plan. The 2021 document sets out an explanation and justification for £130,000 PHR in CIL Zone 2, which the Council ultimately says is where the site is located; but to facilitate delivery of affordable housing on small sites the Council applies £100,000 PHR. However, there is no evidence that a smaller £s PHR figure (which would reduce the size of an AH financial contribution) is unfair to the appellant, not within the delegated authority or powers of Officers or is not derived from or informed by SP Policy P1 or any of the Council's recent objective viability testing.

17. The development plan has evolved since the SPD, but SP Policy P1 purposefully applies to proposals for less than 10 homes as a means to increase AH delivery, in-line with the LP and consistent with objectives of the NPPF. This does not, therefore, instantly render the SPD inoperative or 'irrelevant' as the appellant suggests. In essence, the SPD does not contain a materially different formulaic approach or method to the calculation of

[1] PPG paragraph 23b-004-20190901

affordable housing provision than is set out in SP Policy P1. As such, it is not incompatible or in any significant conflict with the current development plan in respect of broad policy objectives or mechanism[2].

18. Development plans and SPDs are often prepared or reviewed on different timescales, so of necessity overlap. SP Policy P1 and the SPD set out an approach to the provision of AH by financial contribution, including by (in supporting text or other Council documents) a planning obligation[3]. The policy requirement is clear and the certainty that the appellant claims to be absent, is within SP Policy P1 through relevant supporting text and Council evidence base documents; as well as in the SPD which also refers to relevant supporting Council documents, including about when and what financial contributions will be required. Both have been informed by evidence of AH need and viability testing and the SP has been examined in public, including relevant supporting viability testing. There is no suggestion that the SPD was not subject to public consultation.

19. There is no objective evidence that an alleged lack of clarity about AH provision caused the appellant to inaccurately account for it in the price paid for the site, including because I have not been informed about when the appellant did acquire it. The appellant was the owner in April 2023 at the date of the planning application, over a year after the SP was adopted. If it became the owner in that interim period then the price should have been, on the face of it, a matter of normal due diligence including the AH implications of SP Policy P1. If the appellant was the owner before the SP was adopted, including when pre-application advice about the proposal was sought in November 2019, the price paid then would be susceptible to changes in circumstances since, including an emerging or adopted new development plan and SP Policy P1.

20. These are inherent developer risks but the appellant could have opted for 35% AH provision under SP Policy P1 and viability assessment, also in-line with NPPF paragraph 58. If necessary, this may have given an opportunity to reflect the price paid for the site in an AH financial contribution agreed with the Council.

21. There is no published objective evidence before me to endorse alleged changes to some industry standard financial indicators since the SPD and SP were adopted. It is not anyway a purpose of this appeal, about a specific site and development, to embark on a forensic critique of the rationale for the AH policies of the development plan or supporting evidence base, including because the appellant considers these should have said something different. That is a matter for plan review. The appellant's commentary in this regard does not anyway equate in substance to an AH viability assessment for such a review or as would be anticipated for a planning application and SP Policy P1.

22. The appellant, has not, as is otherwise suggested, submitted any appeal decisions, let alone that support its contentions in any of these regards.

Summary and finding

23. There is a development plan (SP Policy P1) basis for an AH financial contribution informed by a £s PHR figure, consistent with relevant provisions of the NPPF and PPG. In this appeal, the SPD establishes £80,000 PHR and though quite old the SPD is still extant, so for the reasons explained above it carries

[2] PPG paragraph 23b-004-20190901
[3] PPG paragraph 23b-004-20190901

moderate weight in my view. Though not yet in this appeal in an adopted SPD, £100,000 PHR is based on the most recent published contemporary Council evidence base. It is consistent with the position taken by the Council since 2011 and in particular since the SP was adopted.

24. Notwithstanding this, and fundamentally in any event, the appellant elected to take the 40% AH provision fast track route which by definition omits viability assessment of the proposal. In which case, the financial contribution including the Council's £s PHR figure is non-negotiable. The appellant has maintained a fast track position in the appeal but not submitted a planning obligation as is otherwise required under the SPD or SP Policy P1 and, as such, I consider would ordinarily meet the relevant tests[4]. Consequently, the proposal would fail to make the Council's £400,000 contribution or a £280,000 contribution or any financial contribution towards the provision of affordable housing. This would not help to increase the rate of affordable housing delivery via small sites.

25. This consideration is relevant to a decision to grant planning permission because in this appeal it relates to a payment where the in principle basis for the value of the payment is not accepted by the appellant. In these circumstances, and though not suggested by the appellant, a negatively worded Grampian condition (limiting the development that can take place until a planning obligation or other agreement has been entered into[5]) is unlikely to be appropriate, including because it would not be enforceable, precise or reasonable so not meet all the relevant tests[6]. No exceptional circumstance has anyway been advanced by the appellant to suggest that a planning condition would be suitable and appropriate, including clear evidence that the delivery of the proposal would otherwise be at serious risk[7].

26. Taking account of all the above, I find that there should be a financial contribution towards the provision of AH, but the proposal would not make a financial contribution. Accordingly, it does not comply with SP Policy P1 or with LP Policy H4(B). Furthermore, this results in a barrier to this development of a small site, at odds with LP Policy H2(A)(1).

**Other Matters**

27. The contemporary design of the dwellings would be different to the mainly traditional design of residential properties nearby, but not incompatible in character or appearance including in layout, arrangement and form. Nor would the site area be overdeveloped in relation to the density of this existing residential development. There site would change noticeably but the development would not be so proximate to cause harm to the living conditions of the occupiers of the closest properties. A single car parked on the site would not alter existing use of the access or traffic generated. Satisfactory internal and external living conditions would be provided for future occupiers of the dwellings and subject to a condition for protection measures the proposal would not adversely affect important trees.

28. The Council did not object to the proposal for any of these reasons and the absence of harm in these respects is a neutral factor in my decision. The effect

[4] NPPF paragraph 57
[5] PPG paragraph 21a-005-20190723
[6] NPPF paragraph 56, PPG 21a-003-20190723
[7] PPG paragraph 21a-010-20190723

of development on private property, including alleged subsidence, is a matter between the respective parties.

29. In the 2022 Housing Delivery Test, housing delivery in the borough has fallen below 75% of the Council's housing requirement over the previous three years, at 66%. By virtue of footnote 8, NPPF paragraph 11 d) is therefore engaged in this appeal. The starting point is that planning permission should be granted.

**Planning Balance**

30. The appeal site is located where residential infilling, such as the proposal, is acceptable in principle under the development plan and subject to a condition it would result in ecology enhancement at the site. It would therefore support the NPPF objective of significantly boosting the supply of new homes to meet peoples living needs. It would also be aligned with aims of the NPPF to make efficient and effective use of a windfall site in an urban area and the dwellings could be built relatively quickly, including biodiversity net gain at the site. Though important considerations, two dwellings would make a small overall contribution in these regards so these public benefits have modest weight in favour of the appeal.

31. On the other hand, and notwithstanding the notable shortfall in this case, the support in the NPPF to delivering housing does not, in my view, dispel that when required development must make suitable and appropriate provision for AH. The proposal would not make any contribution to the provision of AH, so not achieve an objective of the NPPF to meet the needs of people who have this specific housing need. This would be at odds with undisputed objective evidence of a significant identified affordable housing shortfall and need in the borough. The development plan is consistent with the NPPF in these respects and it justifies a local approach to financial contribution in lieu of on or off-site provision of AH in residential developments that are not major developments[8]. Accordingly, there is no AH public benefit in this case and this consideration has substantial weight against the appeal.

32. The adverse impact of granting planning permission would, therefore, significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Consequently, the presumption in favour of sustainable development (the 'tilted balance') does not apply in this appeal.

**Conclusion**

33. The proposal does not comply with relevant policies of the development plan and conflicts with some provisions of the NPPF. There are no other material considerations to indicate that the decision in this case should be made other than in accordance with the development plan taken as a whole. For the reasons given above, the proposal is therefore unacceptable so the appeal does not succeed.

*Robin Buchanan*

INSPECTOR

[8] NPPF paragraphs 64 a) and 65, PPG paragraph 23b-023-20190901