
Appeal Decision

Site visit made on 28 February 2017

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22nd March 2017

Appeal Ref: APP/P5870/W/16/3161774
106A Stafford Road, Wallington SM6 9AY

- 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 Jonathan Hager (c/o Pearl & Coutts) against the decision of the Council of the London Borough of Sutton.
 - The application Ref D2016/74797/FUL, dated 29 June 2016, was refused by notice dated 25 October 2016.
 - The development proposed is demolition of buildings and erection of a residential development comprising three 3 bedroomed 2 storey houses and a separate two storey building to provide three 1 bedroomed and three 2 bedroomed self-contained flats together with car parking, cycle store, refuse and recycling facilities and associated landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Jonathan Hager (c/o Pearl & Coutts) against the Council of the London Borough of Sutton. This application is the subject of a separate Decision.

Procedural Matters

3. The appellant refers to the scheme being amended during the determination process to provide a Brise Soleil on the north facing bedroom windows of building B¹. Although this revision appears to be intended to deal with part of the Council's concerns it is clear that the Council did not determine the appeal on this basis as they considered such a change was material and would not have altered their decision.
4. It is important that what is considered by an Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought². Accordingly, I have dealt with the appeal proposal as shown on the drawings considered by the Council which do not include such an amendment. The matter of whether securing such an amendment via the use of a planning condition would be appropriate, is something which I return to later.

¹ Paragraph 5.10 of appellant's statement of case.

² Annexe M.2.1 of Procedural Guide – Planning Appeals-England.

5. The Council refer to the effect on occupiers of properties in Carew Road, whereas the appellant refers to Waleton Acres. I am satisfied that it was clear from my site visit and the submissions before me those properties that relate to the dispute between the parties and these are more accurately described as being within Waleton Acres. I have determined the appeal on this basis.

Main Issue

6. The main issue is the effect of the proposal on the living conditions of the occupiers of adjoining properties, with particular regard to outlook, privacy and light.

Reasons

The appeal site

7. The appeal site is formed by a rectangular shaped site containing 2 distinctly different modern office buildings and associated hardstanding for car parking to the rear of Stafford Road and accessed via a single width vehicular access. The existing building to the east of the site ('building B') is a large span, shallow pitched roof building that occupies the majority of the depth of the site. The second building ('building A') is a white rendered, 2 storey pitched roof building and again, occupies the majority of the depth of the site although there is more space around it.
8. Abutting part of the rear boundary of the appeal site and to the side of building B are the very small rear gardens belonging to a terrace of 5, 3 storey dwellings in Waleton Acres. The dwellings are very close to the rear boundary and contain first floor windows that directly face onto the upper flank wall and eaves of building B. Furthermore, ground floor windows and doors were located in a flat roof rear element that runs across the whole width of the terrace and therefore were sited even closer to the boundary within the appeal site.

Outlook and privacy

9. It was evident from my visit that the outlook from the ground and first floor windows of 3 of the properties is already affected by the siting of building B albeit that the large expanse of shallow roof slopes up and away from the boundary, reducing its visual impact. The proposed building B would be set back from the boundary slightly more than the existing building and set down from the natural ground level but the side walls of the building would be taller than existing across its full width.
10. Despite a reduction in height from a previously refused scheme the effect of this increase on outlook would be much greater than the existing situation. In such close proximity to the ground, first floor windows and rear gardens of the adjoining properties the eye would be unacceptably drawn to it. In my view, an assessment of the Vertical Sky Component³ is not determinative in this regard and the appellant's submissions somewhat underestimates the likely effect. Overall, it would result in an unacceptable sense of enclosure that would be overbearing and oppressive when viewed from the 2 end properties.
11. I do not consider that this effect could be mitigated by additional landscaping given that ground floor windows are proposed facing onto the boundary and

³ Site Layout Planning for Daylight & Sunlight 2011' published by the Building Research Establishment.

because there would be minimal space for any such landscaping to mature and be effective. The fact that no representations objecting to the proposal from the occupiers of these properties and that outlook would be improved for the occupiers of the middle property in the terrace does not outweigh or justify this harm. There is also nothing substantive before me to suggest that the existing commercial use is an unacceptable neighbour and that adjoining occupiers would benefit from a change to residential.

12. Turning to privacy, the inclusion of such large windows so close to the rear elevation and gardens of the properties would result in a significant perception of being overlooked. In my experience, even with high glass obscuration levels, movements and activities within the rooms would still be perceptible. Moreover, whilst obscuration up to 1.7m may well be a common solution that does not necessarily mean it is acceptable in all situations. The top section of the windows would be clearly glazed and in combination with the orientation of building B, some overlooking would still be possible above this height from bedroom 2 of unit 9 to the end of terrace property, in particular to the first floor windows. This would cause a loss of privacy that would harm the enjoyment of that property.
13. The appellant has suggested a planning condition could secure a Brise Soleil as opposed to obscure glazing. However, notwithstanding that this would be a material change, even with a condition requiring such a design amendment there would still be a loss of privacy and the perception of being overlooked from the upper sections of the windows.
14. The appellant also seems to suggest that the windows could be conditioned to be non-openable⁴. However, by the appellant's own admission non-openable windows would require the input of engineers given such matters as purge ventilation and overheating would need to be considered. Consequently and on the evidence before me I cannot be certain that a condition requiring the windows to be non-openable could be achieved whilst providing acceptable living conditions for future occupiers, especially given it is the only window serving the bedroom. In any event, such conditions would not be necessary as it would still be appropriate to refuse planning permission given my findings in terms of outlook.
15. For these reasons, the proposal would cause significant harm to the living conditions of adjoining occupiers in terms of outlook and privacy. To my mind, such harmful effects are indicative of the proposal not being a high quality of design. It would therefore conflict with Policies DM1 and DM2 of the London Borough of Sutton Site Development Policies Development Plan Document 2012 ('DPD'). Amongst other things, these require a high quality of design and that planning permission will not be granted for any development that adversely affects the amenities of adjoining or nearby properties in terms of outlook/sense of enclosure and loss of privacy.

Light

16. On the evidence before me the proposal would accord with the guidance within the 'Site Layout Planning for Daylight & Sunlight 2011' published by the Building Research Establishment in terms of light, as the proposal would fall beneath a 25 degree angle taken from a point 2 metres above ground level.

⁴ 5.12 of Appellant's statement of case.

Given the setback from the boundary and orientation of the properties I am not persuaded that the proposal would result in harm to the living conditions of adjoining occupiers in terms of loss of daylight or sunlight and I note that the Council has not submitted any substantive evidence to the contrary. The proposal would therefore accord with Policies DM1 and DM2 of the DPD insofar as they require that planning permission will not be granted for any development that adversely affects the amenities of adjoining or nearby properties in terms of loss of light.

Other Matters

17. The policies cited by the Council are consistent with the National Planning Policy Framework ('the Framework') and insofar as outlook and privacy are concerned the proposal would also conflict with the Framework's objective of securing a good standard of amenity for all existing and future occupants of land and buildings. The appellant also refers to the presumption in favour of sustainable development set out within the Framework. However, the proposal would not accord with an up to date development plan which is not absent, nor is it silent and on the evidence before me there are no relevant policies that are out of date. As such, it would not be the sustainable development for which the Framework indicates a presumption in favour.
18. In the unweighted balancing exercise required the minimal economic and social benefits from the provision of 9 dwellings, even in an area of high housing demand and on Previously Developed Land, does not outweigh the significant harm to the living conditions of adjoining occupiers that I have identified.
19. I have also had regard to the representations from a third party relating to the effect on living conditions of the occupiers of Nos. 94 and 94a Stafford Road. However, given the long depth of these gardens a significant part of the gardens would not be overlooked and there would be no material loss of privacy, light or outlook to the occupiers of those properties. Whilst I note that pre-application advice was given and the proposal is a re-submission, the Council's administration and determination of the application is not a matter for me to address as part of this appeal and has no bearing on its planning merits.

Conclusion

20. For the reasons set out above, although I have not found harm in terms of light, I have found significant harm to the living conditions of adjoining occupiers in terms of outlook and privacy. In my view, these are the prevailing considerations and although there would be compliance with some aspects of the development plan, the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that the proposal should be determined other than in accordance with the development plan.
21. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR