
Appeal Decision

Hearing held on 21 March 2017

Site visit made on 21 March 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/P5870/W/16/3159137

The Thatched House Hotel, 135-139 Cheam Road, & 133 Cheam Road, Cheam, Sutton SM1 2BN

- 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 Churchill Retirement Living against the decision of the Council of the London Borough of Sutton.
 - The application Ref B2016/73749/FUL, dated 15 February 2016, was refused by notice dated 19 August 2016.
 - The development proposed is the demolition of existing buildings and redevelopment to form up to 30 one and two bed sheltered apartments for the elderly including communal facilities (Category II type accommodation), access, car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and redevelopment to form up to 30 one and two bed sheltered apartments for the elderly including communal facilities (Category II type accommodation), access, car parking and landscaping at The Thatched House Hotel, 135-139 Cheam Road and 133 Cheam Road, Cheam, Sutton SM1 2BN, in accordance with the terms of the application Ref B2016/73749/FUL, dated 15 February 2016, subject to the conditions as set out in the attached schedule.

Preliminary matters

2. It was confirmed at the hearing that the list of plans to be considered in the determination of the appeal, as set out in the Statement of Common Ground (SoCG), should be amended to reflect that drawing numbers 20062CH PO2 and 20062CH P10 are superseded by drawing numbers 20062CH PO2 Rev A and 20062CH P10 Rev A, and that drawing number 20062CH P12 should be added to the list. These were submitted at application stage in response to queries from the Council relating to trees. No party is therefore prejudiced by this amendment.
 3. It was also confirmed by the main parties that the documents labelled as confidential should not be treated as such, thereby allowing me to take them into account in my determination of the appeal.
 4. For reasons of precision, I have amended the first part of the address of the appeal site from that which is provided on the application form, to reflect that set out in the Council's decision notice.
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5. At the hearing, the appellant provided two copies of the Unilateral Undertaking, with the signatories split over the two documents. To avoid any potential legal complications I subsequently requested, on a non-prejudicial basis, a single version signed by all parties. This was received 2 May 2017.
6. The appellant submitted further evidence after the close of the hearing in the form of a letter dated 20 March 2017 from Gavin Barwell MP, Minister of State for Housing and Planning and Minister for London. I sought the views of the Council on whether I should accept it and its content. The Council has not therefore been prejudiced by my acceptance and consideration of it. Given the date of the letter I am also satisfied that it would not have been possible to provide it within the timetable for the hearing procedure.

Application for costs

7. At the Hearing applications for costs were made by Churchill Retirement Living Limited against the Council of the London Borough of Sutton and by the London Borough of Sutton against Churchill Retirement Living Limited. Both applications are the subject of separate Decisions.

Main Issues

8. The main issue is whether the proposal makes adequate provision for affordable housing.

Reasons

9. The appeal relates to a proposal for 30 sheltered apartments for the elderly at Nos 133-141 Cheam Road, Sutton. The site is currently occupied by a detached house and a hotel, both of which would be demolished.
10. It is agreed between the parties that an off-site affordable housing contribution is acceptable in this case. The issue in dispute is the amount of contribution which should be provided. The SoCG clarifies that the differences which underpin the respective figures relate to profit, threshold land value and the provision of a review mechanism and overage.

Profit

11. The appellant has adopted a developer profit of 20% of the Gross Development Value (GDV) to their viability assessment of the level of affordable housing contribution which should be applied. The Council consider this should be 17.5%.
12. Paragraph 173 of the National Planning Policy Framework (the Framework) advises that to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. The level of developer's profit that would ensure a competitive return is not defined. The Planning Practice Guidance¹ (PPG) explains that this will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. It is stated that a rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible.

¹ Paragraph: 015 Reference ID: 10-015-20140306

13. I have noted the evidence that there is a significant forecast for growth for sheltered accommodation and that there is a significant level of unmet demand for the same. This corresponds with the reference in the Council's evidence to its Strategic Housing Market Assessment (May 2015) which highlights that Sutton is expected to see a notable increase in the older person population over the next 18 years. A demand for sheltered housing is also reflected in that the appellant is seeking to build a second sheltered housing scheme in the Borough within a short space of time.
14. Nevertheless, there are a number of inherent sector specific risks with this form of development which materially differ to that of general needs housing. The 30 apartments would be provided in a single block thereby preventing a phased approach which would assist in cash-flow and allow for risk reappraisal. In this regard, the Council agreed at the hearing that there were more risks associated with flatted development than houses. However, it was also explained that sheltered housing schemes require a much greater degree of completion before sales can be achieved than a conventional market led flatted development as older people are less inclined to buy 'off plan' without seeing the dwelling and its communal facilities, common areas and support infrastructure. This provides a slower return on investment and a longer period of uncertainty and cost exposure.
15. The appellant has explained that although factors such as sales rates are included elsewhere in the appraisal, this will relate to increased finance costs rather than risk. These are two separate matters and I'm not therefore convinced that this would amount to double counting as suggested by the Council. A restricted occupancy also limits the marketability of such housing in comparison to general needs development.
16. Against this, there are aspects of the sector where risks are reduced, including the likelihood of cash buyers without mortgage and the benefits associated with the appellant being a specialist in the provision of this type of accommodation. However, it is necessary to consider the whole sector specific risk profile in the context of policy and guidance on this matter. Indeed, the PPG² recognizes that for older people's housing, the specific scheme format and projected sales rates may be a factor in assessing viability.
17. I have noted the evidence provided by the Council of schemes where developers have been prepared to accept a lower return. However, these all appear to relate to general market flats rather than sheltered housing where there are likely to be restrictive occupancy conditions attached to any planning permission. Therefore, whilst accepting that both are Class C3 uses, there are material distinctions between them such that they do not serve as direct precedents to the appeal proposal.
18. The appellant has also provided an extensive list of Churchill Retirement Living and McCarthy and Stone schemes where a 20% profit on GDV has been accepted at other locations. Although I accept that dates, locations, scheme size and local market dynamics will vary, there is, nevertheless, a clear common denominator in that a 20% profit was applied in all cases.

² Paragraph: 018 Reference ID: 10-018-20150326

19. Moreover, a 20% profit was also considered acceptable by the Council at the Carshalton College site in Sutton which is currently being implemented by the appellant. I accept that the prevailing market conditions and the sizes of the schemes differ, nevertheless, this further weighs in favour of the appellant's position on this matter.
20. The appellant has also provided a number of appeal decisions³ where the Inspector has accepted a 20% profit. Whilst I am unconvinced that the nature of the schemes at Cornwater Fields and Flaxley Road are sufficiently analogous to assist me in this case, the Inspectors' decisions for the Former Royal Hotel and 2-2A Crystal Palace Road do again add weight to the reasonableness of a 20% profit to provide a competitive return. Despite the assertion of the Council, the latter does apply to a London site.
21. Although the letter received from HSBC Bank is not specifically aimed at this development, it does nonetheless provide further evidence of a likely funding requirement of 20% for such schemes. I also agree that the constrained nature of the site will pose a number of difficulties to its development. Whilst the Council say that contingencies of 5% would be at the upper end of the scale for such matters, I have no evidence to demonstrate that this is excessive in this case.
22. I therefore find that in the circumstances of this case, a profit of 20% is not unreasonable or excessive and, in accordance with the Framework, would represent a competitive return to attract a willing developer. Accordingly, it can be used in an assessment on viability in this case.

Threshold land value

23. The PPG⁴ advises that central to the consideration of viability is the assessment of land or site value. It says that the most appropriate way to assess land or site value will vary from case to case but in all cases, land or site value should provide a competitive return to willing developers and land owners and be informed by comparable, market-based evidence wherever possible.
24. The parties are in agreement in relation to the Existing Use Value (EUV) of £1,850,000 for the site derived from £1,200,000 for the hotel and £650,000 for the house at No 133 Cheam Road. The parties also agree on a EUV plus a premium for the hotel of 20%, as an incentive for the land owner to sell. It is not agreed that the same should be applied to the dwelling at No 133.
25. The PPG⁵ explains that a "*competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy.*"
26. In this regard, £650,000 represents a competitive return to the owner of No 133, if that person was looking to sell. However, the dwelling is in use and externally appeared to be in a reasonable state of repair. An option available

³ Appeal References: APP/N3020/S/16/3154302; APP/N1215/A/09/2117195; APP/A5840/S/15/3121484; and APP/N2739/S/16/3149425

⁴ Paragraph: 023 Reference ID: 10-023-20140306

⁵ Paragraph: 024 Reference ID: 10-024-20140306

to the landowner is therefore to continue living at the property. If this is the case and there is no intention to sell, the EUV would provide no incentive to do otherwise.

27. In support of its position, the Council has made reference to an appeal decision⁶ relating to No 1 Coombehurst Close. In consideration of that case the Inspector states that *"by definition, a property will not be offered to market unless the market price includes an incentive to sell."* It is also stated that an *"incentive over and above that value is only necessary where it is desired to suppress an existing use and where the current use value or its value for a realistic alternative is greater than the market value."*
28. In consideration of the above decision, I have had regard to the glossary of terms provided within the RICS guidance note for 'Financial viability in planning' (the RICS guidance note). This defines current use value (CUV) as the market value for continuing the existing use of the site or property assuming all hope value is excluded, including value arising from any planning permission or alternative use. EUV is similarly defined. Market value (MV) is defined as the *"estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."* MV does not therefore exclude other factors, such as hope value or the value arising from any planning permission or alternative use. Accordingly, CUV cannot be greater than the MV; it can only be less than it or the same. Notwithstanding the Coombehurst Close decision, this conclusion was common ground between the parties at the Hearing.
29. In the Coombehurst Close decision, the Inspector goes on to state that *"the current use value is its use as housing; there is no incentive needed to change its use. Any premium paid is above the market norm for housing use and, according to Guidance 023, should be discounted."* In this regard, it is the Council's position that a premium reflects an incentive to change the use and that in this case no incentive is required to come forward for an alternative use as the residential use of the site has already been crystalized. This approach would imply that in order to justify any premium, there must be a material change in the use of the land.
30. Although I do not have the full details of the Coombehurst Close case, it is evident from the decision that it relates to the redevelopment of land occupied by a single dwelling house. This materially differs from the scheme currently before me, which relates to two sites combined together to allow for a larger development scheme that generates additional value.
31. Therefore, for the purpose of assessing viability, the use of a site for a low density, single dwelling is not the same as a more intensive use for sheltered apartments, despite it being agreed that both fall within the same Use Class. This would be equally recognized by both the owner of No 133 and the hotel in their expectation of the sale price for their properties as reflecting a realistic alternative use and the associated hope value. A landowner of a house and a landowner of a commercial property would not be motivated any differently in this regard. I do not therefore consider the appeal proposal to be that envisaged within the Mayor London Draft Affordable Housing and Viability

⁶ Appeal Ref: APP/Q5300/A/14/2224634

Supplementary Planning Guidance 2016 (the Draft SPG), which states that where an existing use and its value to a landowner is due to be retained in a development, a lower benchmark would be expected.

32. Similarly, I have noted the above comments from the Inspector for the Coombehurst Close case and advice of the PPG, that where transacted bids are significantly above the market norm, they should not be used as part of this exercise. However, in my view, this advice relates to transactions that have already occurred where the purchaser has overpaid for the land and in doing so this should not be at the expense of providing, for example, an appropriate level of affordable housing, rather the EUV plus a premium being applied to the appeal proposal to incentivise the landowner to become a willing seller.
33. In terms of the amount, the Draft SPG provides a general support for the use of EUV plus and highlights that the premium could be 20% to 30%, but this will reflect site specific circumstances and may be considerably lower. The definition of EUV plus a premium in the RICS guidance note refers to 10% to 40% as an incentive for the landowner to sell. Therefore, in the circumstances of this case, a 20% premium to the landowner of No 133 represents a reasonable and justified point on this spectrum. The Inspector for the above referenced appeal at Crystal Palace Road also arrives at the same conclusion regarding this level of premium, which moreover is that agreed for the hotel.
34. I do not therefore agree that the Coombehurst Close appeal decision supports the Council's position in the particular circumstances of this case. In my view there has to be a premium above the EUV to provide a competitive return to incentivise the landowner of No 133 to become a willing participant in the release of the site. Accordingly, I find no reason to disagree with the appellant's benchmark land value figure of £2,220,000, for both sites, which can be used in an assessment on viability in this case.

Review mechanism/overage

35. The PPG⁷ is clear in that viability assessment in decision-taking should be based on current costs and values and that planning applications should be considered in today's circumstances. However, it is stated that where a scheme requires phased delivery over the medium and longer term, changes in the value of development and changes in costs of delivery may be considered.
36. Policy 3.12 of the London Plan states that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential schemes, having regard, amongst other matters, to the need to encourage rather than restrain residential development and the need to promote mixed and balanced communities. It is stated that negotiations on sites should take account of their individual circumstances including development viability, the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'), and other scheme requirements. Contingent obligations are defined as the use of S106 agreements to enable and define mechanisms for the re-appraisal of viability prior to the implementation of schemes in whole or in part which are likely to take many years to implement.

⁷ Paragraph: 017 Reference ID: 10-017-20140306

37. Therefore, although the London Plan supports re-appraisal of viability, this relates to schemes which are likely to take many years to implement. This is reinforced in paragraph 4.3.3 of the Mayor of London Housing Supplementary Planning Guidance March 2016 (the Housing SPG). It is also consistent with the PPG, and the RICS guidance note and with the Council's Planning Obligations Supplementary Planning Document (SPD). In the case of the latter, two circumstances are highlighted where the Council will require a new viability appraisal, neither of which are applicable to the appeal proposal. Whilst the RICS guidance note does not amount to statutory planning guidance, the parties agreed at the hearing that great weight should be afforded to it as it provides professional guidance on such matters.
38. The appeal scheme however, would be developed in a single phase and it was agreed at the hearing that this would not amount to a long build out time. The PPG and the London Plan does not therefore advocate the use of such mechanisms in the case of the appeal proposal.
39. The Housing SPG (paragraph 4.3.2) explains that review mechanisms should be based on the most robust data available, this generally will be the price paid for the completed unit. This would support the Council's position for a review mechanism to allow a post completion assessment on actual sales values. However, notwithstanding the above, the Housing SPG clarifies that this will depend on the timing and specifics of the review. In this regard, Policy 3.12 refers to re-appraising the viability of schemes prior to implementation when it is not possible to use actual sales values. Such a stage of review is also supported by the Council's Planning Obligations SPD. Moreover, the PPG is clear in that viability assessment in decision-taking should be based on current costs and values and these have been agreed in the SoCG. This approach provides a greater certainty to the decision as to whether or not to proceed with the development, thereby encouraging rather than restraining residential development.
40. The Draft SPG does introduce a 'threshold approach', whereby schemes which do not meet 35% affordable housing without public subsidy are required to submit viability information. It sets out the reviews which should apply to such schemes to ensure that any future uplift in values contributes to the delivery of the maximum reasonable amount of affordable housing. The first being an early review where an agreed level of progress on implementing the permission is not made within two years of the permission being granted. The UU provided by the appellant would make provision for such an approach by triggering a 'Revised Viability Appraisal' in the event that the development has not reached 'Shell and Core Finish' within 24 months from the date of the planning permission. However, the support for this approach is derived from a Draft SPG, for which it was agreed at the hearing, should be given only limited weight.
41. The UU does not, in any case, make provision for 'a near end of development review' as set out in the Draft SPG. However, whilst this approach may indicate a 'direction of travel' for the London Plan, it is presently inconsistent with the PPG, and the adopted London Plan and the Housing SPG. This therefore further diminishes the weight I have afforded to this particular aspect of it and any concern that such provision has not been made in this case.

42. Moreover, the Government is seeking to boost significantly the supply of housing and a post completion assessment as suggested by the Council would effectively require an overage payment that would likely act as a disincentive to the implementation of the proposal. This approach to a single phase scheme would also be inconsistent with the PPG.
43. Whilst the Council state that such measures are becoming more commonplace and that this hasn't deterred other schemes coming forward, I have not been provided with any such examples, and this reduces the weight I am able to give to such assertions. I accept the appellant has not provided examples of where development has been deterred by such clauses, however, examples of appeal decisions⁸ have been provided where the Inspector has found that an overage type clause brings a significant element of uncertainty.
44. I therefore find that the review mechanism provided within the UU and an overage style payment as suggested by the Council, are not necessary to make the development acceptable in planning terms. As such, they would not accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework. I have not therefore taken the review mechanism contained within the UU into account in reaching my decision.

Other issues

45. The appeal site is situated adjacent to the Landseer Road Conservation Area. The milestone on the appeal site frontage is also a Scheduled Monument. For such matters, paragraph 132 of the Framework makes clear that great weight should be given to the conservation of designated heritage assets, and to their setting.
46. I note that the Council's Officer report concludes that the proposals would present a high quality design that would complement the character and appearance of the adjacent Landseer Road Conservation Area and does not have a harmful impact on the setting of the scheduled monument. I find no reason to disagree with these conclusions and find that the proposal would at least preserve the character and appearance of the Conservation Area. I also note that Scheduled Monument Consent⁹ has been granted by Historic England to remove the existing wall adjacent to the milestone and the construction of a new dwarf wall and railings.
47. I have considered third party comments in respect of access and parking. However, as noted by the Highway Authority, the proposal will meet the required minimum visibility splays and that the level of parking is sufficient for the use. Therefore, subject to the imposition of conditions, no objections are raised by the Highway Authority and I find no reason to take a contrary position.
48. Given the separation, the proposal would not result in unacceptable loss of privacy or light to occupants of Wroughton Court and subject to the imposition of conditions, the proposal would not result in unacceptable harm to the living conditions of other neighbouring residents in Cheam Road, Roseberry Road or Derby Road. I am also satisfied that matters relating to refuse, cycle storage and landscaping can be resolved by way of condition.

⁸ Appeal References: APP/Q1255/S/15/3005876 and APP/N0410/13/2207771

⁹ Reference: S00140300

Conditions

49. The conditions contained within the SoCG were used as a basis for discussion at the hearing. In addition to the standard condition that limits the lifespan of the planning permission, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. As agreed at the hearing, I also attach a condition restricting the age of future occupiers to ensure compliance with sheltered housing requirements.
50. Conditions relating to external finishes and landscaping are necessary to ensure a satisfactory appearance to the development. Tree protection conditions are necessary to ensure their retention and contribution to visual amenity. A condition relating to boundary treatments is necessary in the interests of the character and appearance of the area, privacy and security. This condition and the landscaping condition are also necessary to ensure the setting of the Ancient Monument.
51. Conditions relating to plant noise and obscure glazing for specified windows are necessary to protect the living conditions of existing and future residents. A condition requiring a Construction Logistics Plan is necessary to minimise inconvenience and disturbance to nearby residents, and in the interests of highway safety. Conditions relating visibility splays and parking are also required in the interests of highway safety and a condition requiring secure cycle/buggy parking is necessary to encourage access by non-car modes.
52. Conditions relating to lighting and to secure the recommendations of the bat survey are necessary to minimise potential disturbance to bats and to enhance the conservation status of the same. Conditions are necessary to deal with any unforeseen contamination and to protect unacceptable risks to underlying groundwaters through piling. A condition relating to refuse storage facilities is necessary to serve the needs to development.
53. A condition relating to designing out crime is necessary to reduce the opportunities for criminal behaviour and contribute to a sense of security. This is distinct from the technical security standards covered by Part Q of the Building Regulations. As agreed at the hearing, it is necessary to set a trigger for the agreement of such matters prior to superstructure stage so as to enable approved measures to be built into the scheme.
54. To ensure compliance with Policies DM6 and DM9 of the Site Development Policies DPD, conditions relating to energy and water efficiency are necessary. Conditions are also required to ensure satisfactory methods of surface water drainage and to reduce the risk of pollution.
55. The PPG advises that care should be taken when using pre-commencement conditions. However, in the interests of proper planning and to avoid any potentially abortive works, it is appropriate that the conditions relating to a Construction Logistics Plan, tree protection, energy and water efficiency should be approved prior to the commencement of any works within the main body of the site. As discussed at the hearing, the condition relating to external materials does not need to be agreed prior to commencement and I have amended the trigger accordingly.

56. As agreed at the hearing, for a number of the conditions I have amended the wording to ensure compliance with the provisions of paragraph 206 of the Framework.

Conclusions

57. The proposal would not achieve the overall borough-wide target of Core Planning Strategy Core Policy BP2, that 50% of all new housing from all sources is affordable. However, in accordance with Policies 3.11 and 3.12 of the London Plan and Policy DM25 of the Site Development Policies DPD, it has been demonstrated that the sum of £314,085 contained within the appellant's UU represents the maximum reasonable amount of affordable housing contribution arising from the appeal proposal. In doing so, the proposal would also accord with Policy 8 of the emerging Sutton Local Plan, which, although agreed by the parties as having limited weight due to its stage of preparation, is nonetheless consistent with the London Plan and is a material consideration.
58. As the significant need for affordable housing in the Borough is not in dispute, the contribution would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework. The Council has confirmed that it is satisfied regarding the UU (other than the review mechanism) and I find no reason to disagree.
59. Moreover, the Council recognise the need to provide housing for older people as part of achieving a good mix of housing. In this respect, the London Plan sets out a figure of 70 units as an indicative annualised strategic benchmark to inform local targets and performance indicators for specialist housing for older people between 2015 – 2025 in Sutton. Therefore, the affordable housing and specialist sheltered accommodation arising from the appeal proposal would contribute towards this target and the objectives of Policy 3.9 of the London Plan and paragraph 50 of the Framework, which seek to promote mixed and balanced communities. In doing so, the proposal would meet the social dimension of sustainable development.
60. The associated benefit of freeing up larger, under occupied dwellings within the borough and elsewhere also weighs moderately in favour of the proposal. This benefit would not be materially diminished even if some of the houses were purchased by people who do not currently live in the Borough.
61. The affordable housing contribution of £618,928 required by the Council would render the scheme economically unviable and on this basis it is likely that neither identified benefit would be realised. This would be contrary to paragraph 173 of the Framework, which seeks to provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
62. For these reasons, and having considered all written representation and all matters raised at the hearing, I conclude the appeal should be allowed.

Richard S Jones

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Ground floor survey; First floor survey; 20062CH P01; 20062CH P02 Rev A; 20062CH P03; 20062CH P04; 20062CH P05; 20062CH P06; 20062CH P07; 20062CH P08; 20062CH P09; 20062CH P10 Rev A; 20062CH P12; and 171 LS 001.
3. The occupation of the apartments (excluding any on-site staff) shall be restricted at all times to people of 60 years old and above or those over that age with a spouse or partner of at least 55 years old.
4. Prior to the commencement of superstructure works, full details including samples and a schedule of materials to be used within the external elevations of the buildings, including windows, doors and porches, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials.
5. Prior to the occupation of any of the apartments, details of all boundary treatments and means of enclosure shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
6. Notwithstanding any details shown on any approved plan, prior to the occupation of the apartments, full details of all hard and soft landscaping and replacement tree planting shall be submitted to and approved in writing by the local planning authority, including the detailed design layout for the public realm and landscape design around the milestone. All landscaping and replacement tree planting shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a timetable agreed with the local planning authority. Any trees or plants that (within a period of five years after planting) are removed, die, or are (in the opinion of the local planning authority) damaged or defective, shall be replaced in the first available planting season with others of a similar size/species/number as originally approved, unless the local planning authority gives its consent to any variation.
7. The position of all new underground services shall be located outside the root protection area of retained trees. Should any services fall within the root protection area of retained trees then all ground works shall abide by the recommendations in Volume 4; National Joint Utilities Group Guidelines for the Planning, Installation, and Maintenance of Utility Apparatus in Proximity to Trees (issue 2). Trenches, if required, will be dug by hand or through boring techniques only. Evidence of compliance with these guidelines shall be submitted to the local planning authority as any such instance arises.
8. Prior to the commencement of development, a revised and site specific arboricultural method statement shall be submitted to and approved in writing by the local planning authority. The revised submissions shall detail:
 - a) specific no-dig ground protection measures;

- b) the position of site access, storage, and contractor facilities; and
- c) foundation design and construction where any foundations fall within or adjacent to the root protection area of retained trees.

Fencing and ground protection measures shall, once installed and prior to the commencement of works on site, be inspected and approved by the local planning authority or signed off as fit for purpose by the retained arboricultural consultant. The development shall be carried out in accordance with the approved method statement.

9. Notwithstanding any details shown on the approved plans, the upper floor windows on the flank elevations of the building serving units 12a, 14, 21 and 26 shall be fixed shut, non-opening and obscure glazed to a height of 1.7 metres above the finished floor level and shall be retained as such thereafter.
10. Prior to the occupation of the apartments, details of the external lighting within the site shall be submitted to and approved in writing by the local planning authority. The development shall be carried in accordance with the approved details prior to the occupation of the apartments.
11. No development shall take place until a Construction Logistics Plan which sets out details of how the construction of the development hereby permitted will be managed, has been submitted to and approved in writing by the local planning authority. The statement should include details of:
 - a) parking for vehicles of site personnel, operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials;
 - d) a programme of works (including measures for traffic management);
 - e) provision of boundary hoarding, behind any visibility zones;
 - f) construction traffic routing;
 - g) means to minimise dust pollution, air pollution and suppress noise and vibration in order to protect surrounding residential properties from any disturbance;
 - h) means to prevent deposition of mud on the highway;
 - i) means to manage and control construction traffic;
 - j) signing system for works traffic; and
 - k) compliance with Sutton Council's Code of Practice for the Control of Pollution and noise from Demolition and Construction Sites, May 2008.

Construction works shall take place solely in accordance with the approved details.

12. The apartments shall not be occupied until pedestrian/vehicle visibility splays of 2m by 2m have been provided on each side of the access, the depth measured from the back of the footway (or verge) and the widths outwards from the edges of the access. The visibility splays shall be retained and maintained thereafter and no fence, wall or other obstruction to visibility exceeding 0.6m in height above the surface of the adjoining highway shall be erected within the area of such splays.
13. The apartments shall not be occupied until space has been laid out within the site in accordance with the approved plans for 13 cars to be parked. The

parking area shall be used and permanently retained exclusively for its designated purpose.

14. The apartments shall not be occupied until space has been laid out within the site in accordance with the approved plans for secure cycle/buggy parking. The cycle/buggy parking area shall be used and permanently retained exclusively for its designated purpose.
15. The apartments shall not be occupied until refuse storage facilities have been provided in accordance the approved plans. The storage provision shall be used and permanently retained exclusively for its designated purpose.
16. Prior to the commencement of superstructure works, full details for 'Designing Out Crime' shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter.
17. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
18. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
19. Prior to the commencement of development, an Energy Statement shall be submitted to and approved in writing by the local planning authority. A communal heating system incorporating combined heat and power (CHP) should be considered as the preferred option to provide heating and hot water for the development. If a communal CHP network is not proposed, the Energy Statement should clearly identify why this would not be feasible and/or commercially viable. Prior to the occupation of the apartments, details demonstrating that the development has been carried out in accordance with the approved Energy Statement shall be submitted to and approved in writing by the local planning authority. If the development is unable to meet the agreed reduction in CO₂ emissions through the approved Energy Strategy, then any shortfall should be made up through the application of further sustainability measures, unless otherwise approved by the local planning authority in writing.
20. Prior to the commencement of development, a scheme for the management of surface water run-off shall be submitted to and approved in writing by the local planning authority. The scheme shall identify appropriate site drainage and flood risk management measures, including SuDS, in order to manage surface water run-off as close to its source as possible in accordance with the Mayor's drainage hierarchy. The proposed scheme should ensure that the peak run-off rate for the 1 in 100 year 6-hour rainfall event (plus climate

change) will be as close as reasonably practicable to and no more than 3 times the calculated greenfield run-off rate for the same event, and ensure a minimum discharge rate of 5 litres per second per outfall.

21. Prior to the occupation of the apartments, written confirmation that the approved site drainage and flood risk management measures, including SuDS, have been implemented as part of the development as built shall be submitted to and approved in writing by the local planning authority. Where different from the approved details, further evidence must be provided to show that the peak run-off rate for the 1 in 100 year 6-hour rainfall event (plus climate change) will be as close as reasonably practicable to and no more than 3 times the calculated greenfield run-off rate for the same event, and ensure a minimum discharge rate of 5 litres per second per outfall. All the measures implemented shall be retained for as long as the development is in existence.
22. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to Controlled Waters.
23. Prior to occupations of the apartments, a completed Water Efficiency Calculator for New Dwellings shall be submitted to and approved in writing by the local planning authority to show that internal potable water consumption will be limited to 110 litres per person per day (l/p/d) based on the Government's national calculation method for water efficiency for the purpose of Part G of the Building Regulations. The Water Efficiency Calculator should be accompanied by details of the location and type of all appliances or fittings that use water, the capacity or flow rate of any equipment and any rainwater or greywater collection systems incorporated as part of the development.
24. All plant required by the use shall be installed, together with any associated ancillary equipment, so as to prevent the transmission of noise and vibration into adjacent flats. The rated noise level from all plant and ancillary equipment shall be at least 10 dB below the measured background noise level when measured at the nearest noise sensitive receptor and shall be maintained and retained as such. The method of assessment should be carried in accordance with BS4142:2014 Methods for rating and assessing industrial and commercial sound.
25. The development shall be carried out in accordance with the recommendations set out in the Phase 2 Bat Survey, dated May 2016 and prepared by Ecological Survey and Assessment Limited.

Appearances

FOR THE APPELLANT:

Mr Neil Cameron, QC	Landmark Chambers
Mr Andrew Burgess	Churchill Retirement Living Limited
Mr Nigel Jones	Chesters Commercial
Mr Damien Lynch	Planning Issues
Mr Alex King	Planning Issues
Mr Ben Hatt	Planning Issues

FOR THE LOCAL PLANNING AUTHORITY

Ms Karen McDonnell	Senior Planning Officer
Mr Jody Williams	Deputy Planning Manger
Mr Stuart Cook	Aspinall Verdi

INTERESTED PERSONS:

Mr Ralph Sargeant	Interested party
Mr Paresh Patel	Interested party

DOCUMENTS SUBMITTED AT THE HEARING

1. List entry summary for the milestone scheduled monument outside No 135 Cheam Road, Cheam.
2. Development Appraisal, Churchill Retirement Living, 20 March 2017 – 133 – 139 Cheam Road, Aspinall Verdi Changes for Hearing.
3. Policy 8 of the Draft Sutton Local Plan.
4. Aspinall Verdi Development Appraisal, The Thatched House Hotel, Hearing Statement Appraisal 23.3% (7 units), Report Date: 21 March 2017.
5. Scheduled Ancient Monument Consent Ref: S00140300 dated 30 June 2016.
6. Signed Unilateral Undertaking with signatures spread over two documents.
7. London Borough of Sutton Local Development Framework Planning Obligations Supplementary Planning Document April 2014.
8. London Borough of Sutton Local Development Framework Site Development Policies DPD Policies DM5, DM6 and DM9.

DOCUMENTS RECEIVED FOLLOWING THE CLOSE OF THE HEARING

1. Letter dated 20 March 2017 from Gavin Barwell MP, Minister of State for Housing and Planning and Minister for London.
2. Consolidated signed and dated Unilateral Undertaking (10 May 2017).