
Appeal Decision

Site visit made on 18 July 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 07 August 2017

Appeal Ref: APP/P5870/W/17/3173020

Land to the rear of 2-14 Cheam Common Road and 501-515 London Road, Cheam KT4 8RW

- 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 I Patel (TEENA LLP) against the decision of the Council of the London Borough of Sutton.
 - The application Ref A2016/76023/FUL, dated 5 December 2016, was refused by notice dated 10 February 2017.
 - The development proposed is redevelopment of the land to provide a 4 storey detached building comprising of 9 self-contained units (3 x 1-bed and 6 x 2-beds) with associated car parking spaces, cycle and refuse storage at ground floor level.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of the development used in the banner heading above has been taken from Council's decision notice and the appeal form, as it more fully and accurately describes the proposal than the description in the planning application form.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the character and appearance of the area;
 - the living conditions of occupiers of the surrounding first and second floor flats fronting onto London Road and Cheam Common Road, with particular regard to outlook and sunlight/daylight, and the living conditions of future occupiers of the building, with regard to noise and disturbance; and,
 - parking at the site and in the area.

Reasons

Character and appearance

4. The appeal site is located to the rear of an inter-war art deco building which wraps round the corner of a major road junction at 2-14 Cheam Common Road and 501-515 London Road. The three storey building has commercial outlets on the ground floor with residential flats on the floors above. The building is

inscribed with the name 'Lavender Corner' on its central façade. Access to the site is off Cheam Common Road. The appeal site is currently used for informal parking and is next to a motor vehicle repair garage, located just to the northwest. The wider surrounding area is a mix of mainly residential housing and commercial buildings.

5. It is proposed to erect a roughly rectangular 4 storey detached building comprising of 9 self-contained flats, with undercroft car parking and cycle and refuse storage on the ground floor. It would, according to the Council, be approximately 10.2 metres wide, 21.4 metres deep along the east elevation, 26.2 metres along the west elevation and 10.9 metres high. Those figures have not been disputed by the appellant.
6. Although the proposed building would have a flat roof and be located to the rear of existing built form, it would, because of its 4 storey height, be visible over the existing impressive art deco facades of the 'Lavender Corner' building. The appellant suggests that viewpoints would be significantly restricted but has not disputed the Council's assessment that it would be visible over the existing building. The footprint of the proposed development would also occupy almost all of the appeal site, save for the access. The 'Lavender Corner' building is in a prominent location at a major junction in the district centre. Its art deco facades are currently set against a backdrop of open sky. Therefore, a large building, of a contrasting modern utilitarian design, emerging above it, even if only partially visible, would have an adverse visual impact on the street scene that would be noticeable to significant numbers of people.
7. Whilst there appears to be disagreement between the main parties as to whether the proposal is in an area of 'taller building potential', the supporting text of Policy BP13 of the Core Planning Strategy (CPS)¹ says that 'taller buildings' are considered to be those above 3 storeys (9 metres). Therefore, the content of the policy itself applies. Although, it would be sited on an area of hardstanding reusing previously developed land, which is in its favour, its 4 storey scale would be out of keeping in a locality where the prevailing form of development is, generally, 3 storeys or less.
8. Consequently, I conclude that the design, scale, height and massing of the proposal would harm the character and appearance of the area. It would, therefore, also conflict with policy 7.4 of The London Plan², which seeks to ensure that development is of high quality design and has regard to the pattern and grain of existing spaces in its scale, proportion and mass. It would also be contrary to policies BP12 and BP13 of the CPS which, amongst other things, seek to ensure that development respects local context and distinctive local character and that tall buildings make a positive contribution towards the skyline and surrounding area as well as visually integrating with both the townscape and streetscape.
9. Similarly, it would fail to comply with the requirement of policies DM1 and DM3 of the Site Development Policies DPD (SDP)³ that development maintains and enhances the local character and appearance of an area and is of a scale, massing and height that is appropriate to its setting.

¹ London Borough of Sutton Local Development Framework: Core Planning Strategy December 2009

² The London Plan: The Spatial Development Strategy for London Consolidated With Alterations Since 2011 (March 2016)

³ London Borough of Sutton Local Development Framework: Site Development Policies DPD March 2012

Living Conditions of nearby and future occupiers

10. The second and third floor flats within the 'Lavender Corner' building have numerous rear windows facing the largely open hard standing area, which comprises the appeal site.
11. According to the Council, the southern elevation of the proposed building would be only about 1.5 metres from the shared bounding with 501 and 503 London Road and 6 to 14 Cheam Common Road and within 10 metres or so of the rear elevation of those buildings. Similarly, the eastern elevation of the building would be approximately 1 metre from the shared boundary and in the region of 12 metres from residential flats fronting onto London Road. The appellant has not disputed those distances.
12. The appellant refers to revisions made to the scheme in its resubmitted form, including the relocation of walkways and balconies to the other side of the building. Notwithstanding any changes that may have been made compared with previous schemes, the proposal before me would introduce a substantial 4 storey building immediately next to, and higher than, existing residential flats. Given its height, scale, mass and proximity to the existing flats, it would, in my judgement, not merely change the view from the windows of those flats, but have an overbearing and enclosing effect on their occupants.
13. Whilst the appellant submits that concern about the possible effect of the development on sunlight or daylight received through the rear windows of the existing flats is misplaced, no evidence, such as a professional daylight/sunlight report, has been provided to support that assertion. Given the significant height and size of the proposed building together with its nearness to the surrounding flats, it seems likely that there would be some adverse effect on daylight/sunlight, particularly at first floor level. In the absence of any persuasive evidence to the contrary, it is reasonable to adopt a precautionary approach in considering effects on living conditions.
14. Future occupiers of the proposed flats would have sufficient internal space, which meets the minimum internal floor space requirements of The London Plan. They would also have access to outdoor living space in the form of balconies. However, there is concern that the close proximity of the development to the adjacent motor repair garage, to the northwest, would result in noise and disturbance for future occupiers of the flats.
15. The appellant suggests that the development is in a busy commercial district where such noise is to be expected and is already experienced by existing residents. Whilst that is acknowledged, the proposed building would be closer to the garage than other buildings. Although, the residential accommodation would be above ground floor level, the primary windows and balconies would, as confirmed in the appellants statement of case and by the submitted plans, be on the north and west elevations, which would be just above the motor repair garage.
16. Whilst noise from the garage could be mitigated internally, to an extent, by the use of appropriate sound insulation and glazing, that would not be effective during the summer months or other periods, when residents may well wish to have windows open for ventilation. Moreover, they would also be likely to be exposed to noise when using their balconies, which would be their only outdoor living space.

17. Although the opening hours of the garage are not referred to in the evidence before me, the flats could be occupied by a range of people including those who may be at home during periods of the day. Noise from garages can include the starting and tuning of engines along with other noise generated from equipment and by repair work. The sudden and intermittent nature of such noise can be particularly disturbing. Therefore, it is likely that future residents would be adversely affected by noise from the garage which could not be adequately mitigated by condition.
18. Overall therefore, I conclude that the proposal would harm the living conditions of occupiers of the surrounding first and second floor flats fronting onto London Road and Cheam Common Road, with particular regard to outlook and sunlight/daylight. It would also adversely affect the living conditions of future occupants of the proposed development, with regard to noise and disturbance. Consequently, the proposal would be contrary to policy DM2 of the SDP, which seeks to protect the living conditions of adjoining or nearby occupiers and future occupiers with regard to outlook, sunlight, daylight, noise and disturbance.

Parking

19. The Council states that based on its maximum parking standards for 1-2 bedroom dwellings, the development should provide 9 off-street parking spaces. The Council and the appellant appear to be in agreement that 7 ground floor parking spaces would be provided. There are further spaces shown on the submitted plans but the appellant refers to loading bays being provided for surrounding commercial outlets, which would provide some benefit, if operators of those businesses have no formal rights.
20. Policy DM22 of the SDP advises that new development will be expected to provide the appropriate amount of car parking necessary in accordance with the Council's restraint-based maximum car parking standards, taking into account, amongst other things, public transport accessibility levels (PTALs). The Council advises that 7 spaces are two below its maximum parking standard. There is, therefore, some flexibility built into Policy DM22.
21. Concern is also expressed by the Council about the loss of informal parking provision on the site. However, the appellant submits that the vast majority of any parking is not as of right or with permission, which has not been disputed by the Council. Therefore, whilst I note the Council's concern about the displacement effect, I do not agree that it is appropriate to take that aspect into account in determining the appeal, as it is not the appellant's responsibility to make alternative provision for vehicles parked illegitimately.
22. The appellant states that it considers the proposed parking provision to be acceptable and refers to the sustainable location. The Council's Highways Officer says that appropriate justification would be required to depart from the expectation that the parking standard, although a maximum level, would be met, as expressed in Policy DM22. The location does have a PTAL rating of 3 which, in the Council's view, is a moderate level. However, the appellant does not explain in any detail why 7 spaces for 9 flats should be considered sufficient or appropriate.
23. In the circumstances, I do not consider that a sufficient case has been made by the appellant to explain or justify the level of parking proposed. The lack of

sufficient provision for onsite parking could have a detrimental effect on future occupiers and lead to over-spill parking. However, given that the provision would be only two spaces below that expected, I give the potential adverse effects more limited weight in my overall determination.

Conclusions

24. The appellant submits that the provision of 9 flats, with an appropriate housing mix, would make a contribution to the supply of housing. Whilst such contributions can be positive, the Council advises that it has met its housing targets for the last two years. Furthermore, although paragraph 49 of the National Planning Policy Framework (the Framework)⁴ advises that housing applications should be considered in the context of a presumption in favour of sustainable development, paragraphs 11, 12, 14 and 15 of the Framework make clear that it is an up-to-date Local Plan that is the vehicle for delivering such sustainable development. Proposed development which conflicts with such a development plan should normally be refused, unless material considerations indicate otherwise.
25. Furthermore, paragraph 64 of the Framework says that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Similarly, the core land-use planning principles in paragraph 17 refer, amongst other things, to securing high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Those aspirations are reflected in the relevant development plan policies.
26. Taking the above into account, the contribution made by 9 dwellings to the supply of housing, in a context when the Council appears to be meeting its housing targets, does not outweigh the clear harm that I have identified to the character and appearance of the area and the living conditions of nearby and future occupiers. I consider the inadequate level of parking provision to be of less significance, although it still weighs against the proposal.
27. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Tudor

INSPECTOR

⁴ Published March 2012