
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: 10 August 2017

Appeal Ref: APP/P5870/W/17/3173744
2 Vernon Road, Sutton SM1 4QX

- 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 A Mukherjee against the decision of the Council of the London Borough of Sutton.
 - The application Ref B2016/74612/FUL, dated 7 June 2016, was refused by notice dated 2 March 2017.
 - The development proposed is the demolition of the existing commercial buildings on the site and the construction of 4 no 4 bed houses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

- whether the development should be 'car-free'; and,
- the effect of the proposed development on the character and appearance of the area.

Reasons

Car-free development

3. Although not a reason for refusal in the Council's decision notice, the Council Officer's Report clearly states that the development would be designated as car free, to be secured via a legal agreement. The report also indicates that the Council's Senior Highway Engineer has not objected to the proposed parking provision, which is for just one vehicle, on the basis that the applicant is willing to enter into such a legal agreement which would ensure that future occupiers would be aware that they would not be able to obtain resident parking permits. In these circumstances, it is necessary for me to consider that matter in my determination of the appeal.
4. No suitable legal agreement has been submitted with the appeal documentation and, despite the assertion in the Council Officer's Report, there is no indication of an intention or willingness to enter into such an agreement in the appellant's appeal submissions.

5. The Council advises that policy DM19 of its Site Development Policies DPD (SDP)¹ states that new development should be accessible by, and make provision for, sustainable modes of transport. Policy DM22 of the SDP requires all new development to provide the appropriate amount of parking in accordance with the Council's restraint-based maximum car parking standards. The policy allows various factors to be taken into account including public transport accessibility levels (PTALs), existing parking provision and usage in the vicinity of the site and the need to deter unnecessary car use whilst avoiding over-spill parking problems. Policy DM22 also indicates that planning permission will be granted for developments proposing limited or no parking providing that the site is located within a high PTAL area.
6. Although the appellant refers to a PTAL rating of 4, the Council advises that the appeal site has a PTAL rating of 5, indicating that there is a very good level of public transport accessibility. The appeal site is also within a Controlled Parking Zone (CPZ) with resident permit holder restrictions in place. The appellant agrees that the site has good access to public transport and it is on that basis that only 1 parking space would be provided. The site is within the limits of sustainable residential development and near Sutton's town centre. Therefore, I consider that the site occupies an accessible location where future occupiers would have genuine alternatives to car based travel. On that basis the proposed parking provision is, in principle, acceptable.
7. Nevertheless, in the light of the Council's comments, it is also necessary for me to consider whether it is important for the development to be 'car free'. With regard to parking stress, at the time of my mid-morning weekday site visit, although I appreciate it is only a snapshot; it appeared that most parking spaces in the surrounding residential streets were occupied. There was an option on a nearby road to purchase 'a pay and display ticket' which allowed parking within the resident permit holder area, but available spaces were very limited. It is reasonable to suppose that at peak periods the demand for parking would be higher.
8. The proposal is for the construction of 4 x 4 bedroom houses which would be likely to attract families and generate car use. I also note that a previous proposal albeit for a flatted development, included provision for 8 off-street parking spaces. Given that in the proposal before me only one of the houses would benefit from a single off-street car parking space, I consider that it would be necessary to ensure that the development would be car free. Otherwise, it would be likely to generate a demand for further parking permits in an area. Therefore, in the absence of any evidence to the contrary, I share the Council's view that the development would need to be 'car free'.
9. There has been ample opportunity for the appellant to submit an appropriate legal agreement or provide an alternative mechanism to achieve car-free status. The Council Officer's Report refers to the use of conditions to secure the development as car free. However, I note that no such condition has been included in the Council's suggested conditions. In any event, the Planning Practice Guidance (PPG) advises that: *'A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered*

¹ March 2012

into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.'

10. The PPG also states that '*in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk*'.² I do not consider that this proposal for four houses falls into the category of '*more complex or strategically important development*' or that there are exceptional circumstances. Therefore, it would not be appropriate to employ such a condition in this case.
11. In the absence of a suitable legal agreement or alternative mechanism to ensure that the development is car free, I conclude that the proposal would fail to promote the use of sustainable modes of transport and would be likely to result in increased on-street parking adversely affecting traffic flows, road safety, the amenity of local residents and the local environment and, therefore, be contrary to policies DM 19 and DM 22 of the SDP.

Character and appearance

12. The appeal site is located on the south side of Vernon Road, near its junction with Lind Road. It is currently occupied by single storey industrial buildings formerly used as a motor repair garage. They form the boundaries of the site and are arranged around a small central courtyard with access onto Vernon Road. Although the area is mixed use, with some light industrial and commercial uses, Vernon Road and the surrounding roads are predominantly characterised by two storey residential housing although there are also some three storey buildings, such as the block of flats opposite the junction with Lind Road. It is also located within the Newtown Area of Special Local Character (ASLC), which the SDP advises is made up of two-storey Victorian terraced housing.
13. It is proposed to demolish the existing buildings and erect a short terrace of four two storey houses, each with four bedrooms and a private rear garden. Although the Council Officer's Report recommended approval of the proposal, the Council's Planning Committee took a different view which they are perfectly entitled to do. The Council's view is that the proposal is not significantly different from a previous scheme which was dismissed on appeal.³
14. The proposed houses would sit between an existing terrace to the east and to the rear of terraced houses along Lind Road. The ridge height of the main roof would, according to the Council Officer's Report, be about 1.1 metres higher than the immediately adjacent terrace on Vernon Road, whilst the eaves height would be marginally lower. However, the houses would appear to be lower than the corner terrace on Lind Road.
15. Buildings along Vernon Road vary in height and style. They include larger semi-detached houses which are taller than some of the existing terraces. Roof designs are also mixed with a flat roofed terrace of properties immediately

² Paragraph: 010 Reference ID: 21a-010-20140306

³ APP/P5870/W/15/3136146

opposite the appeal site and some other dwellings with gable ends facing the road. Some of the height differentials are a result of the changing gradient along the road, but many of the buildings are by no means of uniform height in relation to their neighbours.

16. The Council suggests that the roof design, in particular, adds significant bulk and massing to the proposal compared with the adjoining terraces and that the roof would be particularly prominent. It cites paragraph 5 of the Inspector's decision in the previous appeal, referred to above, in support of its assessment. Plans relating to that previous refused proposal have also been provided by the appellant for comparison purposes.
17. It is apparent that there are significant differences in the design of the previous scheme. In the related appeal decision, the Inspector notes, at paragraph 4, that the development would be approximately 30% deeper than the terraced properties on either side. Whilst the roof would be noticeably higher than the adjacent terrace, the Inspector also observes that *'the roof would be topped by a significant flat section which would be discordant with, and unsympathetic to, the traditional roof forms in the area.'* The Inspector's comments in paragraph 5, therefore, need to be understood in the context of her preceding description. Some other elements of the previous design which contributed to the Inspector's overall judgement, including an *'awkward canted corner'*, no longer feature.
18. In contrast to the previous proposal the new scheme has a more traditional dual pitched roof design, albeit with skylights, which would reduce its bulk compared with the previous scheme. Furthermore, the rear of the terrace would have a flat roof single storey element whereas the previous scheme was at two storeys to its full depth. Therefore, when, in paragraph 5, the Inspector refers to views from Lind Road junction, the references to the flank walls and the contrasting proportions of the development would be in relation to a proposal with a significantly different roof design and overall scale. Overall, whilst the total height is similar, I consider that the proposal before me is significantly different from the previous appeal scheme.
19. Although the ridge height would be slightly higher than the adjoining terrace, the eaves height is only very marginally lower. Therefore, given the traditional dual pitched design, I do not consider that the roof element would appear significantly bulkier or more prominent than the adjoining terrace or many other buildings in the area. The western flank elevation would be visible looking from the junction of Lind Road, but its traditional gable end and depth, reduced from the previous proposal, would not appear disproportionate to other buildings. It would also represent an improvement on the stark breeze block walls, corrugated roofs and industrial appearance of the existing buildings on the site. The change of use would remove the possible adverse effects on living conditions that may result from a resumption of commercial use. Overall, I consider that the proposal would relate positively to the street scene. I find, therefore, that I share the view expressed in the original Council Officer's Report in that respect.
20. It is suggested by the Council that the introduction of gable end features to the front elevation, without the corresponding bay windows, along with the significant porches would be out of character with the Newtown ASLC. However, whilst the brief summary character appraisal provided in the SDP

does refer to 'bay ground floor windows' that is in the context of describing the two types of terraced houses in the area. The other type is a traditional terrace, presumably without such bay windows. Indeed, the immediately adjacent terrace in Vernon Road does not have bay windows and whilst there are some gable ended properties along the road incorporating bay windows at ground and first floor, there are other properties with gables which do not have bay windows. There is no reference to porches in the SDP description of the area, but I saw various porched or covered entrances, including some with gables. Those various building forms all contribute to the character and appearance of the area. In that context, I do not agree that the gable elements of the proposed design or the porches introduce noticeably incongruous features.

21. The above factors, lead me to conclude that the proposed development would not harm the character of appearance of the area. It follows, therefore, that the proposal would not conflict with policy BP12 of the Council's Core Planning Strategy⁴ or Policies DM1, DM3 and DM4 of the SDP which, amongst other things, seek to ensure that development respects local context and character, that its scale, massing and height are appropriate to its setting and that it contributes positively to the street scene.

Conclusion

22. I have found that proposal would not result in harm to the character and appearance of the area. However, the lack of any completed legal agreement or mechanism to secure a 'car free' development and the related harm that I have identified is decisive. It leads me to conclude that, for the reasons given above and having regard to all other matters raised, the appeal should be dismissed.

Jonathan Tudor

INSPECTOR

⁴ December 2009