



Appeal Decision

Hearing Held on 1 October 2019

Site visit made on 1 October 2019

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2019

Appeal Ref: APP/A5840/W/19/3224561 54 Camberwell Green, London, SE5 7AS

- 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 Viewranks Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref 17/AP/1314, dated 31 March 2017, was refused by notice dated 13 September 2018.
 - The development proposed is Full Planning Permission for change of use of the building from Class C2 (care home) to residential (Class C3), a part three and part four storey rear extension including basement, and additional floor and mansard to the existing building in order to provide 38 one to three bedroom flats. Provision of one on-site disabled car parking space, cycle parking and a refuse enclosure at ground level.
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Decision

1. The appeal is allowed and planning permission is granted for Full Planning Permission for change of use of the building from Class C2 (care home) to residential (Class C3), a part three and part four storey rear extension including basement, and additional floor and mansard to the existing building in order to provide 38 one to three bedroom flats and provision of one on-site disabled car parking space, cycle parking and a refuse enclosure at ground level in accordance with the terms of the application, Ref 17/AP/1314, dated 31 March 2017, subject to the conditions listed in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Viewranks Ltd against the London Borough of Southwark. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council's letter notifying interested persons of the hearing venue and time was dated 25th September 2019. I understand that it was also sent by email on this date to those parties who had made comments on the application. I have considered the above the views of the main parties and I am satisfied that interested parties have not been prejudiced by continuing with the hearing.
4. The Draft London Plan and the New Southwark Plan are referred to in the appeal submissions. I am not presented with details of these draft policies. Nevertheless, at the hearing it was agreed that the 'saved' policies in The Southwark Plan 2007 (the Southwark Plan), policies of the Core Strategy April

2011 (the Core Strategy) and the London Plan March 2016 (the London Plan), along with policies of the 2019 National Planning Policy Framework (the Framework) and advice in the 2015 Technical Update to the Residential Design Standards Supplementary Planning Document (the SPD) are the most important for determining this appeal.

Main Issue

5. The main issue is whether the proposed development would make adequate provision for affordable housing with particular reference to whether the proposed development would be an efficient use of the land.

Reasons

6. Policy 3.12 of the London Plan requires that the maximum reasonable amount of affordable housing should be sought on individual schemes, and that this should normally be provided on site. Strategic Policy 6 of the Core Strategy seeks as much affordable housing as is financially viable on development such as that proposed, and Policy 4.4 of the Southwark Plan seeks at least 35% of all new housing to be affordable housing and, amongst other things, at point vi seeks a tenure mix of 70:30 social rented: intermediate housing ratio. Insofar as there is any conflict between these policies, I give the greatest weight to those most recently adopted.
7. I have been presented with two alternative Unilateral Undertakings (UUs) in relation to the proposed development. One which secures 8 affordable housing units, all in shared ownership (the shared ownership agreement). One which secures 7 affordable housing units in a mix of tenures with 4 social rented units and 3 units in shared ownership (the tenure split agreement).
8. The fact that both of these agreements represent the maximum reasonable amount of affordable housing that could be provided by the proposed development is not in dispute between the main parties.
9. The tenure split agreement achieves a mix of tenures broadly in line with development plan policy. Whilst the wholly shared ownership arrangement would not be in accordance with this policy requirement, it is put to me that it would be more likely to lead to the delivery of affordable housing on site, and therefore would be in accordance with policy in this respect. This is because Registered Providers (RPs) may be reluctant to take on the smaller number of units across two different tenures. However, I am not provided with substantive evidence from any RPs to substantiate this assertion. Consequently, based on the evidence before me, the tenure split agreement is more closely in accordance with the development plan. Therefore, the affordable housing on site should be provided by way of the Mixed Tenure Affordable Housing Units and this is the UU on which my decision is based.
10. There is dispute between the parties in relation to the detailed wording of the legal agreement. Specifically relating to the definitions associated with the timing for Review Mechanism 1. Whilst there is a risk that, using the definition of substantial implementation that is before me, only the rear block would be built, I see that this includes the 4 social rented units (and no private units). Therefore, even if this were to occur, I am satisfied that a suitable proportion of affordable housing would be delivered and the scheme would make adequate provision for affordable housing.

11. Policy 3.11 of the Southwark Plan requires development to maximise the efficient use of land subject to criteria which take into account the specific characteristics of the site. It was put to me that the proposed development would be an inefficient use of the land, and a different development could provide an increased amount of affordable housing on this site. The Council submitted details of an 'alternative scheme' in this regard.
12. I have been presented with evidence as to how the courts have approached decisions which include a potential alternative scenario¹. These cases essentially conclude that the relative advantages of alternative uses on the application site are normally irrelevant in planning terms. I do not find any reason why there would be exceptional circumstances which lead to an alternative option being relevant in this case. I have considered the appeal primarily on its own merits, and in the light of the relevant policies.
13. Even if I were to consider the submitted 'alternative scheme', it does not include full details including elevations, substantive evidence relating to the impact on living conditions amongst other things, nor had it been subject to public consultation. Therefore, I am not satisfied that there is a reasonable possibility that such a development would be built. Consequently, I find that the alternative scheme is vague in nature and unlikely to come about. As such, in any case, I give this very limited weight.
14. I understand that the alternative scheme was intended to be indicative to demonstrate that another development may deliver more affordable housing on this site. However, an as yet undecided alternative is even more vague and unlikely to come about than the 'alternative scenario' above, so I afford this scenario extremely limited weight.
15. The design of the proposed development has been justified with respect to its effect on the living conditions of neighbouring occupiers (including daylight and sunlight effects), and in terms of its character and appearance amongst other things. Therefore, the proposed development would not result in an unjustified underdevelopment of this site.
16. Consequently, for the reasons above, the proposed development would make adequate provision for affordable housing with particular reference to the fact that the proposed development would be an efficient use of the land. Therefore, in these respects, the scheme would not be contrary to Policy 3.11 of the Southwark Plan and although the scheme does not fully comply with Policy 4.4 of the Southwark Plan it would comply with Strategic Policy 6 of the Core Strategy and Policy 3.12 of the London Plan and in the circumstances, these carry the greater weight. Nor would it be contrary to the relevant policies contained in the Framework.

Other Matters

17. I have reviewed the evidence in relation to daylight and sunlight to neighbouring properties including the daylight and sunlight report, and the advice from Council Officers. I am not presented with substantive evidence which leads me to dispute these professional findings.

¹ R. (on the application of Mount Cook Land Ltd.) v Westminster City Council [2003] EWCA Civ 1346, and SSCLG vs Carroll [2016] EWHC 2462 (Admin), [2017] EWCA Civ 1315

18. In order to ensure that neighbouring occupiers would benefit from adequate levels of privacy, a condition is proposed which would require some of the proposed windows closest to the windows at the neighbouring properties to be obscure glazed.
19. The residential units proposed would be adjacent to other existing residential uses. I am not presented with detailed evidence that there would be an unacceptable effect on the noise experienced at neighbouring properties as a result of the proposed development. Nor am I presented with substantive evidence to suggest that there would be a harmful structural impact as a result of the proposed development.
20. As discussed above I have been presented with a UU in relation to this case. It includes mitigation in the form of £15,115 towards Children's Play equipment and Sport Development. I see that the development would not provide children's play space and that this money would be provided towards play equipment and sports development in the vicinity of the site. It is put to me that the amounts are calculated in line with the child yield and average cost for providing play equipment as set out in the Section 106 Planning Obligations and Community Infrastructure Levy (CIL) Supplementary Planning Document (1 April 2015) (the Planning Obligations SPD) and I have no reason to dispute this amount.
21. It also includes mitigation in the form of £20,538 towards a Carbon Green Fund. I note that the reduction of carbon emissions on site is at a level that requires remaining carbon emissions to be offset. The financial contribution would be applied towards carbon mitigation measures in the Borough. Based on the evidence before me I am satisfied that this amount is acceptable.
22. I am directed to policies 6.11 and 6.13 of the London Plan which suggest that Councils may consider promoting car clubs in their development plans. However, I am not presented with adopted development plan policies which require this. Therefore, based on the evidence before me, I am not satisfied that the Car Club Scheme as set out in the submitted UU is necessary to make the development acceptable in planning terms. Therefore, this cannot be taken into account and I attach no weight to this obligation.
23. The appellant has sought to minimise parking on site. Based on the evidence before me I understand that there is a high demand for on street car parking within the Controlled Parking Zones. I am therefore satisfied that it would be necessary to secure that residents would not be entitled to car parking permits to park in a parking bay as part of this UU. The mechanism to achieve this has not been challenge by the Council and I have no reason to doubt that it would be effective. On this basis the proposed development would be unlikely to result in any significant change to the on-street parking situation in the vicinity of the site and would not be harmful to highway safety with regard to parking.
24. The UU secures highway works in the form of stopping up and creating new vehicle crossovers and parking controls related to these, and repair of damage to the highway from construction vehicles. I am satisfied that these would be required to make the development acceptable in planning terms. The UU also requires that the development replace the footway adjacent to the site. I am not presented with evidence that persuades me that replacing an existing footway would be fairly and reasonably related in scale and kind to the proposed development. Therefore, this cannot be taken into account and I

attach no weight to the obligation at part a of the definition of Section 278 Highway Works.

25. The UU includes a schedule to secure the steps to be taken to ensure that the wheelchair dwellings are disposed of to those in need of Wheelchair housing and I have sufficient evidence to conclude that this would be necessary.

Conditions and Conclusion

26. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents, including ensuring that the conditions would not unnecessarily delay the delivery of development.
27. I am attaching the standard implementation condition, and in the interests of certainty a condition to define the plans with which the scheme should accord.
28. Conditions requiring details of nesting boxes and details of the green/brown roofs are necessary in order that the development makes a positive contribution to the protection, enhancement, creation and management of biodiversity. Both conditions include a requirement that these works shall be carried out in accordance with the details approved. Therefore, a post completion assessment would not meet the test of necessity. I have also removed the sections detailing the information to be submitted to avoid unnecessary duplication.
29. A condition relating to tree protection measures is required in the interests of the character and appearance of the area and biodiversity. I have removed reference to the pre-commencement meeting as the relevant information is to be submitted and approved in writing. I have also removed reference to specific trees as, prior to the survey taking place, it is not known whether these trees would be required to be protected. Consequently, reference to them would be unreasonable. This condition is required to be pre-commencement as it includes measures that would need to be carried out prior to development commencing in order to be effective.
30. I am not provided with substantive evidence that there are particular issues in relation to security at this site, nor evidence that achieving 'secure by design standards' are required to improve community safety or for reasons of crime prevention on this site. As such I am not provided with evidence that this condition is necessary to the proposed development so I have omitted it from the schedule of conditions below.
31. Conditions requiring details of materials and hard and soft landscaping are required in the interests of the character and appearance of the site and the surrounding area. I have removed details of the green roof from the landscaping condition to avoid duplication of condition 6.
32. The permanent retention of the disabled car parking space is required to ensure that the parking space for disabled people is provided and retained. A condition is also required to ensure that the units are built to accessible standards in order to ensure a genuine choice of homes which meet requirements for different types of dwellings. The trigger for this condition is prior to occupation in order that it does not unnecessarily delay the delivery of this development. I have also amended the unit numbers to correspond with

those annotated on the list of approved drawings and in the UU. Conditions requiring the implementation and retention of refuse and cycle stores are required in the interests of the character and appearance of the area and living conditions for future occupiers and in order to encourage sustainable modes of transport, respectively.

33. A condition requiring windows to be obscure glazed is required in the interests of the privacy of existing and future occupiers, and a condition requiring sound levels to be achieved in the proposed units would be required in order to ensure an acceptable standard of living for future occupiers.
34. I am not presented with evidence that this site is likely to be contaminated. Therefore, I am not satisfied that a condition requiring action to be taken in relation to contamination at this site would meet the test of necessity.
35. For the reasons above, and subject to the conditions in the schedule below, this appeal should be allowed.

H Miles

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the end of three years from the date of this permission.
- 2) The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans: 4813 3 040 Rev A - PROPOSED GROUND AND SITE PLAN 4813 3 041 - PROPOSED FIRST AND SECOND FLOOR PLANS 4813 3 042 - PROPOSED THIRD AND FOURTH FLOOR PLANS 4813 3 043 - PROPOSED FIFTH FLOOR AND ROOF PLAN 4813 3 044 - PROPOSED ELEVATIONS 4813 3 045 - PROPOSED ELEVATIONS 4813 3 046 - PROPOSED SECTIONS 4813 3 047 -PROPOSED BIN/BICYCLE STORES PLANS AND ELEVATIONS

- 3) The use hereby granted permission shall not begin until details of sparrow terrace bird boxes, and swift nesting boxes have been submitted to and approved in writing by the Local Planning Authority.

The details shall include the number of boxes, exact location, specification and design of the habitats. The use hereby granted permission of the building of which they form part shall not begin until the boxes are installed.

The nesting boxes shall be installed strictly in accordance with the details so approved and shall be maintained as such thereafter.

- 4) Prior to works commencing, including any demolition, the following details shall be submitted to and approved in writing by the Local Planning Authority.
 - a) Arboricultural Impact Assessment including an Arboricultural Survey.
 - b) Details of changes to ground levels, pruning or tree removal.
 - c) A detailed Arboricultural Method Statement showing:
 - i) the means by which any retained trees on or directly adjacent to the site are to be protected from damage by demolition works, excavation, vehicles, stored or stacked building supplies, waste or other materials, and building plant, scaffolding or other equipment,
 - ii) details of facilitative pruning specifications and a supervision schedule overseen by an accredited arboricultural consultant.
 - iii) Cross sections to show surface and other changes to levels, special engineering or construction details and any proposed activity within root protection areas required in order to facilitate demolition, construction and excavation.

The existing trees on or adjoining the site which are to be retained shall be protected and both the site and trees managed in accordance with the recommendations contained in the Arboricultural Method Statement.

All tree protection measures shall be installed, carried out and retained throughout the period of the works. In any case, all works must adhere to BS5837: (2012) Trees in relation to demolition, design and construction and BS3998: (2010) Tree work - recommendations.

If within the expiration of 5 years from the date of the occupation of the building for its permitted use any retained tree on site is removed, uprooted is

destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.

- 5) Before any above grade work hereby authorised begins, material samples/sample-panels/sample-boards of all external facing materials to be used in the carrying out of this permission shall be submitted to and approved in writing by the Local Planning Authority; the development shall not be carried out otherwise than in accordance with any such approval given.
- 6) Before any above grade work hereby authorised begins, details of the biodiversity (green/brown) roofs shall be submitted to and approved in writing by the Local Planning Authority. The biodiversity (green/brown) roofs shall be: biodiversity based with extensive substrate base (depth 80-150mm); laid out in accordance with agreed plans; and planted/seeded with an agreed mix of species within the first planting season following the practical completion of the building works (focused on wildflower planting, and no more than a maximum of 25% sedum coverage).

The biodiversity (green/brown) roof shall not be used as an amenity or sitting out space of any kind whatsoever and shall only be used in the case of essential maintenance or repair or escape in case of emergency.

The biodiversity roofs shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.

- 7) Before any above grade work hereby authorised begins, detailed drawings of a hard and soft landscaping scheme showing the treatment of all parts of the site not covered by buildings (including cross sections, surfacing materials of any parking, access, or pathways layouts, materials and edge details), shall be submitted to and approved in writing by the Local Planning Authority. The landscaping shall not be carried out otherwise than in accordance with any such approval given and shall be retained for the duration of the use.

The planting, seeding and/or turfing shall be carried out in the first planting season following completion of building works and any trees or shrubs that are found to be dead, dying, severely damaged or diseased within five years of the completion of the building works OR five years of the carrying out of the landscaping scheme (whichever is later), shall be replaced in the next planting season by specimens of the same size and species in the first suitable planting season. Planting shall comply to BS: 4428 Code of practice for general landscaping operations, BS: 5837 (2012) Trees in relation to demolition, design and construction and BS 7370-4:1993 Grounds maintenance recommendations for maintenance of soft landscape (other than amenity turf).

- 8) Prior to occupation of the units hereby approved, one disabled parking space, as shown on the drawing referenced 4813 3 040 REV A - PROPOSED GROUND AND SITE PLAN hereby approved, shall be made available, and retained for the purposes of car parking for the disabled for as long as the development is occupied.
- 9) Prior to occupation of the units hereby approved, the proposed units shall be fitted out to meet the standard of the Approved Document M of the Building Regulations (2015) required in the schedule below and as corresponding to the

approved floor plans. The development shall be carried out in accordance with the details thereby approved by the appointed building control body :

- M4(3a): Unit reference numbers: 2,3,5,6
- M4(2): All other units

- 10) Prior to occupation of the units hereby approved, in addition to the details of the balcony screening as indicated on the approved plans, details of additional screening for the balconies to flats 12, 19, 26 to a height of 1.8m and details of obscure glazing to a height of 1.8m to secondary living room windows within flats 13, 14, 15, 20, 21, 22, 27 shall be submitted to and approved by the Local Planning Authority and shall not be replaced or repaired otherwise than with obscured screening or glazing.
- 11) The dwellings hereby permitted shall be designed to ensure that the following internal noise levels are not exceeded due to environmental noise:
 - Bedrooms - 35dB LAeq T**, 30 dB LAeq T*, 45dB LAFmax T *
 - Living rooms- 35dB LAeq T **
 - Dining room - 40 dB LAeq T **
 - * - Night-time 8 hours between 23:00-07:00
 - ** - Daytime 16 hours between 07:00-23:00.
- 12) Prior to occupation of the units hereby approved the cycle storage facilities as shown on drawings 4813 3 047 PROPOSED BIN/BICYCLE STORES PLANS AND ELEVATIONS and 4813 3 040 REV A - PROPOSED GROUND AND SITE PLAN shall be provided and thereafter such facilities shall be retained and the space used for no other purpose and the development shall not be carried out otherwise than in accordance with any such approval given.
- 13) Prior to occupation of the units hereby approved, the refuse storage arrangements shown on the approved drawings 4813 3 047 - PROPOSED BIN/BICYCLE STORES PLANS AND ELEVATIONS and 4813 3 040 REV A PROPOSED GROUND AND SITE PLAN shall be provided and made available for use by the occupiers of the dwellings and thereafter such facilities shall be retained and the space used for no other purpose and the development shall not be carried out otherwise than in accordance with any such approval given.

APPEARANCES

FOR THE APPELLANT

Zack Simons	Landmark Chambers
Pascal Levine	DS2 - Chartered Surveyor
Sean Tickle	Rolfe Judd Planning
Annalise Smith	Rolfe Judd Planning - Planning Consultant (Associate)
Alex Ground	Russell-Cooke LLP - Solicitor

FOR THE LOCAL PLANNING AUTHORITY

Alex Godinet	London Borough of Southwark – Planning Lawyer
Lasma Putrina	London Borough of Southwark – Senior Planning Officer
Sonia Watson	London Borough of Southwark – Team Leader Development Management
Cecilia Fellows	Avison Young Viability

DOCUMENTS

SSCLG vs Carroll [2016] EWHC 2462 (Admin), [2017] EWCA Civ 1315

Handwritten notes relating to pre-commencement conditions

London Plan (2016) policies: 3.6, 3.7, 6.11, 6.13

Core Strategy (2011) Strategic Policy 5

Draft copy of S106 agreement (tenure split agreement)

Draft annotated copy of S106 agreement (Shared Ownership agreement)