



Appeal Decision

Site visit made on 8 June 2020

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 06 July 2020

Appeal Ref: APP/P5870/W/20/3249085

2-4 Copse Hill and 52-54 Brighton Road, Sutton SM2 6AD.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Mark Hendy (Shanly Homes Limited) against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2019/00925, dated 31 May 2019, was refused by notice dated 15 October 2019.
 - The development proposed is the redevelopment to provide part 4, part 6 and part 7 storey height building comprising 65 no. studio, 1 and 2-bed flats with access from Copse Hill, associated car parking and landscaping.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with only 'landscaping' reserved for future approval.
3. To avoid repetition, I have omitted the site address from the description of development.
4. The Council's Appeal Statement¹ confirms that it no longer wishes to contest Reasons for Refusal (RfR) 11 (daylight), 12 (technical standards) and 17 (land contamination). I have dealt with the appeal accordingly.

Main Issues

5. The main issues are:
 - (a) The effect of the development upon the character and appearance of the area;
 - (b) The effect on the supply of family housing in the Borough;
 - (c) The effect on the living conditions of future occupiers with regards to private outdoor amenity space and outdoor play space;
 - (d) The effect of the development on the living conditions of neighbouring occupiers with particular regards to overlooking and a loss of daylight;
 - (e) The effect on community facilities;
 - (f) Whether the proposed level of affordable housing would be policy compliant;

¹ Paragraphs 1.1, 2.22 and 2.23

- (g) The acceptability of the proposed car parking arrangements,
- (h) Whether the development would comply with the Council's environmental policies with regards to carbon emissions, energy networks and air quality, and
- (i) Whether the site would be satisfactorily drained.

Reasons

Character and appearance

6. The Council's opposition to the scheme is based on its scale, bulk, mass and layout which are described as 'excessive'. Amongst other things, Policy 28 of the "*Sutton Local Plan 2018*" (the LP) seeks to ensure that new buildings are attractive, respect local context and character in terms of scale, massing and height. Section (q) states that within '*Areas of Taller Building Potential*' development will be expected to integrate visually with the townscape and streetscape.
7. The appeal site is a square plot of brownfield land situated between the junctions of Copse Hill and Grange Vale, fronting Brighton Road. It is flanked by two imposing, eleven-storey flatted developments known as Dunfold Court and Leith Towers. Detached and semi-detached houses tend to dominate on the opposite side of Brighton Road and to the rear of the site along Copse Hill.
8. The appeal site is situated within easy walking distance of Sutton town centre and the shops, services and public transport facilities therein. I noted a wide array of building styles in the local area with flatted developments of one form or another dominating along Brighton Road. As the Council points out, many of these are set within generous plots, set-back from Brighton Road with significant landscaping. Whilst not unattractive, the site forms part of a robust and varied urban townscape which is not particularly sensitive in architectural or streetscape terms.
9. The site currently comprises four, two-storey dwelling houses² all of which would be removed to make way for the proposed part two, part six and part seven storey, U-shaped building comprising 65 self-contained residential units. The proposal would provide some soft landscaping to the edges of the site, with associated parking and circulation areas. The building itself would be constructed from brick cladding, weatherboard panelling, glass with a recessed top floor. Bulk and mass aside, the Council raises no particular objection to the detailed design and appearance of the development including the materials.
10. There can be little doubt that the removal of the existing residential scale buildings and their replacement with a large, modern flatted development would completely change the appearance of the land. However, that is not a reason to dismiss the scheme out of hand particularly as the appeal site lies within an area identified in the LP as an Area of Potential Intensification (API) where, along with the town centre, LP Policy 1 seeks the delivery of 3,400 homes over the plan period. The density of the development would be similar, if not less, than many of the surrounding flatted developments and according to the Appellant's calculations, would be within the range set out in the Matrix to LP Policy 7.

² 2 Copse Hill was converted to a dental surgery in the 1980s.

11. In terms of bulk and mass, the obvious starting point is to acknowledge the presence of the two high-rise towers immediately north and south of the appeal site. Whilst these do not set a precedent for the proposed building, they are an intrinsic part of the local context and clearly must carry considerable weight in any assessment.
12. The proposed building would sit comfortably below the height of the towers and would not impinge on their dominance. When viewed from public vantages to the north and south along Brighton Road, the proposed development would simply be seen against the backdrop of these much larger buildings. This point is amply illustrated by the Appellant's computer-generated images.
13. I acknowledge that the building would occupy a high proportion of its plot and would have a prominent and perhaps bulky appearance in frontal views from Brighton Road. However, I do not reasonably consider this could be described as harmful given the site's robust context. The computer-generated images demonstrate that the set-back of the top storey, the use of contrasting materials, recessive elements, corner balconies and strong fenestration patterns would all help provide articulation to the main elevations. Rather than oppressive and dominating, the result would be a striking building with considerable presence which would add a new and distinct element to the street scene.
14. Although the building would be set further forward than the two tower blocks, there is not a strong or uniform building line along the western side of Brighton Road and the footprint with its staggered front elevation would align roughly with that of the existing buildings on the site. The decrease in height from east to west would be sympathetic to the traditionally proportioned properties in Copse Hill. Although a notable difference in building height would still be apparent, one has to accept that a degree of contrast is almost inevitable in areas such as this where residential properties are located close to higher rise flatted developments. Indeed, I noted numerous examples in the area where multi-storey buildings sit aside more modest residential properties. At four-storeys, the height of the two rear wings close to the western site boundary would accord with Map 7.2 to the LP Annex which the Council has referred to.
15. I accept that the front part of the building would exceed four-storeys. However, it is far from clear from the wording of LP Policy 28 what status or weight should be given to the accompanying maps in the Annex. The Council refer to the maps as '*policy guidance*' rather than policy itself and there is no suggestion that any building over four-storeys would be contrary to LP Policy 28. In any event, I have set out above why I consider the height of the proposed building would be acceptable in this instance.
16. Although the landscaping to the site frontage would help to enhance the character and function of the Brighton Road frontage, I do have concerns that the Appellant is expecting too much from the site. The building would patently occupy a high proportion of its plot leaving little separation to its northern and southern site boundaries. The northern rear wing would also extend uncomfortably close to the western site boundary. Given the height of the southern rear wing and the proximity of existing landscaping along the shared boundary with No 6, the proposed area of amenity space in the north-west corner would be tightly constrained, secluded and heavily shaded. These

attributes are unlikely to endear it to future occupants nor would it be conducive for use as a children's play area.

17. Restrictions allied to the recent Covid-19 pandemic highlighted the importance of good quality private outdoor amenity space. However, looking at the layout, one gets the distinct impression that the design of the appeal scheme was dictated by the number of units and size of the building rather than outdoor space considerations. Even if I am wrong about that, the overall amount and quality of outdoor amenity space, particularly to the rear of the building, would be notably poor and is indicative of a poor design and overdevelopment of the site.
18. For the reasons set out above, I conclude that the development would have an unduly cramped appearance which would harm the character and appearance of the area. Accordingly, it would conflict with LP Policies 7 and 28, Policies 3.4, 3.5, 3.6, 7.4, 7.6 and 7.7 of *"The London Plan 2016"* insofar as they seek high-quality design that promotes local distinctiveness.

Family housing

19. LP Policy 9b(i) is clear that 50% of new developments outside Sutton town centre should comprise three-bedroom or larger units unless it can be demonstrated that this would be unviable or the particular site circumstances are not suitable for family housing. The policy is supported by *"The London Plan 2016"* which acknowledges *"there is significant need for affordable family homes"*³.
20. The appeal scheme does not contain any three-bed flats. Drawing support from difficult sales at its Cavendish Road scheme, the Appellant argues that there is a general lack of demand for three-bed units at commercially viable values. However, these claims are disputed by several of the objectors. Even if I were to prefer the Appellant's narrative, I am not persuaded that reference to one site alone is a reasonable basis for waiving the requirements of a recently adopted Development Plan policy.
21. LP Policy 1 seeks to deliver 427 dwellings per annum over the plan period. Accordingly, I appreciate that a balance has to be struck between providing housing choice and making the most efficient use of the land particularly where a site is located within an API as is the case here. However, there is no substantial evidence before me to demonstrate that the Council is failing to meet its housing targets or that a policy compliant level of three-bed flats on the appeal site would jeopardise the Council's ability to meet those targets.
22. I therefore conclude that in the absence of substantial justification, the lack of three-bed units would bring the development into conflict with LP Policy 9.

Living conditions – future occupiers

23. LP Policy 9(f) states that the Council will not grant planning permission for new residential development which does not provide an adequate amount of private amenity space. An adequate amount of amenity space will be considered on a *"case-by-case basis with reference to the minimum standards (used as a guide)"*. Standard 26 of the *"Mayor of London Housing Supplementary*

³ Paragraph 3.44

Planning Guidance 2016" (the SPG) stipulates a minimum of 5m² of private outdoor space for 1-2 person dwellings.

24. The Council has not disputed the Appellant's argument that the balconies serving plots 7, 9 and 31 would meet the required standard. However, the Appellant accepts that the dimensions of those balconies serving plots 8, 10, 11, 20, 22, 23, 32, 34, 35, 43, 45, 46, 55 and 56 would be smaller than the 5m² set out in the SPG.
25. According to the Appellant, the balconies serving these plots would measure 4.2m². The Council's Appeal Statement puts their size at 4.56m². By either calculation there would be a small shortfall and therefore conflict with Policy 9(f). However, there is a degree of flexibility built into Policy 9(f) and in this case the Council has failed to explain how such a small shortfall would lead to unacceptable living conditions for future occupiers. There has been no suggestion that the balconies would not be of "*practical shape and utility*" which is one of the overarching aims of the SPG. In my view, the balconies would offer a good level of amenity with sufficient space for sitting out, the drying of clothes and the like.
26. Therefore, whilst there would be conflict with LP Policy 9(f), I am not persuaded on the evidence before me that the size of the balconies would materially harm the living conditions of future occupiers of these 14 plots. As reflected in the wording of LP Policy 9, outdoor space requirements should be applied on a case-by-case basis in a manner that recognises their overall aims and objectives. In this instance, the lack of harm to future occupiers tempers the weight I attach to the conflict with LP Policy 9(f). Put another way, the policy conflict would be insufficient in itself to withhold planning permission if the scheme were otherwise acceptable.
27. Policy 9(g) states that the council will not grant planning permission for new major residential development, which does not provide an adequate amount of play and informal recreation space on site. Beyond the identification of an area to the rear of the building, no meaningful details of the play area have been provided. Although the Council accept that the north-east corner of the site may provide an appropriate location, I have already set out my concerns in that regard. Taking a precautionary approach, I am not satisfied that an appropriate level of outdoor play space could be provided. Accordingly, the development would conflict with LP Policy 9(g).

Living conditions – neighbours

28. LP Policy 29 states that the Council will not grant planning permission for any development that adversely affects the amenities of future occupiers or those currently occupying adjoining or nearby properties, with regard to considerations of overlooking, outlook, light, noise and vibration, traffic movement amongst other things.
29. RfR 6 alleges that the balconies in the western elevation would result in unacceptable overlooking of the garden of 6 Copse Hill. The first point to make is that rather than facing westwards towards No 6, the plans indicate that the balconies would in fact be orientated to the south and therefore face towards the southern rear wing. Nonetheless, it would be possible to obtain westward views from the end of each balcony at a distance of approximately 7m metres at the closest point.

30. According to the Council, the balconies to plots 28, 16, 40 and 51 would be approximately 9.3m from the shared boundary with No 6. Although these balconies would be primarily orientated to the north, it would be possible to gain direct views of the bottom part of the rear garden to No 6. The balconies to plots 17, 29, 41 and 52 and 61 would be orientated to the south albeit that views of No 6's garden would be possible from the western edge of each balcony.
31. To remedy the potential for overlooking, the Appellant has suggested that privacy screens could be installed to the western edge of each balcony. The Council has not commented on this suggestion but in my view, screening would be an acceptable solution. Therefore, subject to the imposition of a planning condition, I am satisfied the development would not have an unacceptable effect on the living conditions of the occupiers of No 6.
32. The Council's second area of concern relates to a loss of daylight to the occupiers of 71 Brighton Road and 1-2 Melton Court which are located on the eastern side of Brighton Road. The Appellant's assessment of these matters is contained in a Daylight and Sunlight Assessment. In response to the Council's concerns an updated report was submitted with the appeal. Following well-established Building Research Establishment (BRE) guidelines⁴, the report found that the reduction in daylight/sunlight to the majority of neighbouring buildings would be within acceptable limits. No instances of a reduction in sunlight to neighbouring gardens or amenity areas were found.
33. Although four instances of Vertical Sky Component (VSC) and 2 instances of No Sky Line non-compliance were found, in all cases, the authors of the report found that the degree of change would be negligible and not at a level to cause an adverse impact on the daylight and sunlight received by neighbouring buildings. In the case of the VSC assessment, the updated report notes that when the model outputs are rounded to a single decimal place there would be no exceedances of the BRE guidelines.
34. The Council have not challenged the Appellant's report with any cogent evidence of its own. I am therefore satisfied that the development would not result in any unacceptable loss of daylight/sunlight to surrounding properties. Accordingly, there would be no conflict with LP Policy 29.

Community facilities

35. The development would result in the demolition of the existing dental practice. LP Policy 22 states that the Council will not grant planning permission for development that involves the loss of social and community infrastructure unless the use is no longer required or suitable alternative provision is made or is available nearby.
36. Appendix 1 to the Appellant's Statement of Case includes a letter from The White House Practice Ltd which confirms that it will be merged with another provider in the local area. All current staff and patients will transfer to the new practice. Further details have now been provided and the merged practice will be located on Cedar Road, a short distance from the appeal site.

⁴ 'Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice (2011)

37. As the dental services would simply be re-provided at a different site nearby, I am satisfied that there would be no loss of community infrastructure. Accordingly, there would be no conflict with LP Policy 22.

Affordable housing

38. LP Policy 8 states that the council will seek a minimum of 35% of all dwellings to be affordable on a site when negotiating on individual residential and mixed-use schemes. It goes on to state that the Council will have regard to; individual site costs, economic viability, the availability of public subsidy and any other scheme requirements.
39. In support of the Appellant's decision not to offer an affordable housing contribution, a Viability Appraisal and Report was submitted with the planning application. In line with best practice, the report is based upon up to date market evidence in relation to land values and costs. Based on a developer's profit of 17.5% and with no affordable housing contributions, the report concludes that the proposal would be in deficit against the Benchmark Land Value. To reach break-even point, the developer's profit has been adjusted to 10.02% or £2.4m.
40. The Council concedes that it has not sought independent advice in relation to the Applicant's Viability Report and does not dispute its findings. Instead it argues that in light of the deficit there is a lack of justification concerning the deliverability of the scheme relying on paragraph 5.40 of its "*Affordable Housing and Financial Viability SPD 2020*" and paragraph 3.10 of The Mayor's "*Affordable Housing and Viability SPG 2017*". These advise applicants to demonstrate deliverability of their scheme where a viability assessment shows a deficit.
41. The Council's submissions on this matter are unconvincing and appear to conflate the meaning of deficit and loss. The Appellant's evidence shows that the scheme would be viable, albeit with a reduced level of profit. In pursuing the appeal, it has to be assumed that the Appellant (an experienced developer) is prepared to accept a lower profit. Quite what other justification the Council requires, is not clear.
42. Although the contents of the SPD and SPG are noted, they are not policy and should not be construed as such. LP Policy 8 makes no such reference to deliverability. Accordingly, I am satisfied that the Applicant has demonstrated that the scheme would not be viable with an affordable housing contribution. The absence of such would not therefore conflict with LP Policy 8.

Car Parking

43. LP Policy 37 of the Sutton Local Plan states that '*new developments will be expected to provide car parking in accordance with the council's restraint based maximum car parking standards taking into account public transport accessibility levels, existing publicly available parking provision and usage in the vicinity of the site and the need to deter unnecessary car use while avoiding overspill parking problems*'. The supporting text explains that parking standards are normally lower in those areas most accessible by public transport in order to encourage the use of public transport and other forms of sustainable transport

44. There is no dispute that the site boasts excellent connectivity to public transport with the town centre, bus stops and local train station all within easy reach. The site has a PTAL rating of 5 'very good'. The proposal includes the provision of 32 car and 95 cycle parking spaces. This equates to approximately 0.5 spaces per flat. Although the Council accept that the level of provision is acceptable, the objection is based on the absence of a legal agreement which would prevent future occupiers from obtaining residential car parking permits in the Sutton Town Centre Controlled Parking Zone.
45. The Council and local residents argue that this would result in overspill car parking on the surrounding roads to the detriment of the safe and efficient operation of the public highway. I have several concerns with that approach.
46. Firstly, the Council's approach is not supported by Policy 37. This only seeks legal agreements in respect of 'car-free' development i.e. developments which do not provide parking. There is not a blanket requirement for all developers to provide prohibitive legal agreements. Secondly, there is no justification before me to explain why a departure from Policy 37 would be justified in this instance. For example, there is no substantive evidence of parking problems in the vicinity which the development would exacerbate. Indeed, no details have been provided about the location of the site in relation to the CPZ or whether permits therein are already over-subscribed. Finally, and perhaps most fundamentally, the Council have not explained how a development that is deemed policy compliant in terms of parking provision would lead to overspill parking in the first place.
47. Based on the above, the Council's parking objections do not stand up to scrutiny. Whilst I can well understand the concerns of local residents regarding the problem of parking, I noted on my site visit that restrictions are already in place on the surrounding streets. Consequently, illegal parking should it occur would be an enforcement matter for the Council. Accordingly, I conclude that the development would not conflict with LP Policy 37.

Carbon emissions, energy networks and air quality

48. RfR 15 alleges non-compliance with LP Policy 34 (environmental protection) and Policy 31 (carbon and energy). Amongst other things these require major developments to apply the Mayor's Energy Hierarchy and to achieve a 35% reduction in CO₂ emissions. The remaining regulated emissions must be secured by offsetting measures elsewhere and s106 contributions are sought in this regard.
49. The Appellant submitted a Sustainability and Energy Statement dated 28 May 2019 with the application. The report sets out how selected energy efficiency, low carbon and renewable energy technologies have either been omitted or included into the scheme⁵. The anticipated reduction in carbon emissions is shown in the table on page 3 of the report and equates to 35%. The report considered the possibility of a connection to a decentralised energy connection network but concluded the development was not of sufficient scale to make this a viable option. No technical evidence nor examples of other similarly sized developments have been adduced by the Council to counter these conclusions.

⁵ The scheme would include a flue-gas heat recovery system in each flat as well as solar panels capable of generating 36.297 kW.

- I am therefore satisfied that the applicant has demonstrated that a connection to a decentralised energy network is not feasible in this instance.
50. RfR 15 also refers to uncertainty regarding the proposed heating system. However, I am satisfied that the Council's requirement for ultra-low NO_x gas boilers could be secured via a suitably worded planning condition.
51. With regards to the offsetting contribution, it is not necessary for me to repeat my findings on the viability evidence but as with affordable housing, I am satisfied that the payment of an offsetting contribution would further erode the scheme's viability and should not be sought. Despite that, and unlike LP Policy 8, the requirements of Policy 31(a) are not contingent on the viability of the scheme. Accordingly, there would be conflict with Policy 31(a) insofar as the offsetting contribution is concerned and this weighs against the scheme in the overall planning balance.
52. LP Policy 34(d-f) requires development to minimise increased exposure to poor air quality as well as be '*air quality neutral*' and not lead to further deterioration of existing poor air quality. The appeal site lies within a Borough wide Air Quality Management Area (AQMA) which was designated in 2013. The Council accept that levels of NO_x and PM₁₀ are below the AQMA thresholds for these pollutants in 2017. Tables 2 and 3 of the Appellant's air quality screening assessment dated 23 May 2019 show a general picture of improving air quality across the Borough since 2013.
53. The Appellant's report goes on to conclude that there would be no breaches of Institute of Air Quality Management thresholds in respect of road traffic emissions and any adverse impacts arising from construction activity could be adequately mitigated. Whilst the Council does not necessarily disagree, it argues that the Appellant's data does not consider the potential short-term exposure to pollutants. To remedy this, it is suggested that the Appellant undertakes active monitoring of the short-term exposure levels at the appeal site. Given that the Appellant does not dispute the existence of short-term NO_x exceedances, it is not clear from the Council's submissions what the purpose of further monitoring would be.
54. In my view, the data shows a clear downward trend in NO_x and PM₁₀ pollutants across the Borough. Whilst there will inevitably be times, due to prevailing weather conditions, when concentration levels will exceed the requisite thresholds, I do not consider that is a reasonable basis for seeking to withhold planning permission. The Council have not presented any data to demonstrate that these short-term events are particular to the immediate area or would be of such frequency or duration as to expose future occupants to unacceptable levels of air pollution.
55. As the Council rightly point out, the main source of NO_x pollution is from road traffic. In terms of its traffic impact, the Transport Assessment submitted with the application concludes that the development would generate a net increase of 2 and 4 two-way vehicular trips in the AM and PM peak hour⁶. The Council has not challenged these figures. It therefore strikes me that irrespective of the level of short-term exceedances, that the development would have a negligible impact on air quality.

⁶ See Table 5.2 of the Icen Transport Assessment May 2019

56. I am therefore satisfied that the development would be air quality neutral and not lead to further deterioration of existing air quality. Accordingly, there would be no conflict with LP Policy 34 (d-f).

Drainage

57. To reduce flood risk from new development, LP Policy 32 requires applications for major development to be accompanied by a Flood Risk Assessment. Part b to the policy also states that new development should incorporate effective sustainable drainage systems to manage surface water run-off which should aim to achieve minimum performance standards through the application of the Mayor's Drainage Hierarchy.
58. The site lies within Flood Zone 1 and is regarded as having a very low probability of flooding. The Appellant acknowledges that the proposed development would result in an increase in surface water runoff rates. For its part, the Council accept that the site is physically capable of being drained. The disagreement is therefore one of detail.
59. Section 6 of the Appellant's "*Flood Risk Assessment and Drainage Strategy*" sets out the intended approach to surface water drainage and references the hierarchy of techniques⁷. It notes that the underlying chalk geology will allow for some soakage. However, owing to space constraints and current restrictions, permeable paving is proposed rather than traditional soakaways.
60. The report calculates that the approach set out above would be sufficient to retain all storms including the peak 1 in a 100-year event. The Council has not adduced any technical evidence to repudiate the findings of the Appellant's report or to support its view that "*excess surface water could result localised flooding*". Based on the foregoing, I am satisfied that the proposal would not increase flood risk in the area and would accord with the requirements of LP Policy 32
61. The detailed design of the drainage scheme including further calculations, investigation and ownership/maintenance arrangements are all matters that could be resolved through the imposition of a planning condition which is the standard approach to these matters.

Other Matters

62. I have noted the wide range of concerns raised by the local community. In the main, these repeat the concerns raised by the Council which I have already dealt with. I have noted concerns about biodiversity. However, the site manifestly has little ecological value and therefore I am satisfied that it would be possible to ensure there is no net-loss to biodiversity at the Reserved Matters stage. In the absence of any substantial evidence to the contrary, I can see no impediment to the provision of satisfactory bin storage/collection arrangements.

Overall Conclusions

63. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the application is determined in accordance with the development plan unless material considerations indicate otherwise.

⁷ See paragraph 6.3.3

64. I have found that the development would cause harm to the character and appearance of the area, the living conditions of future occupiers, the supply of family housing in the Borough and the Council's carbon offsetting strategy. These harms bring the development into conflict with LP Policies 7, 9, 28 and 31.
65. Although I have found the development acceptable in terms of its effect on the living conditions of neighbouring occupiers, loss of community facilities, affordable housing, car parking, drainage, energy networks and air quality, these are all neutral considerations in the planning balance. I have taken into account the economic and social benefits of the scheme. However, these do not outweigh the harm I have found and the conflict with the development plan in that regard.
66. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

D. M. Young

Inspector