



Appeal Decision

Site visit made on 16 February 2021

by M Scriven BA (Hons) MSc CMgr MCIHT MCMi

an Inspector appointed by the Secretary of State

Decision date: 05 March 2021

Appeal Ref: APP/P5870/W/20/3260344

4 St. James Road, Sutton, SM1 2BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Chris Green of Stonegate Homes LTD against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2020/01124, dated 23 July 2020, was refused by notice dated 18 September 2020.
 - The application sought planning permission for the demolition of the existing buildings and erection of a three storey building comprising one studio unit, five 1 bedroomed and three 2 bedroomed self-contained flats together with associated landscaping, refuse and cycle storage without complying with a condition attached to planning permission Ref B2017/77218, dated 26 July 2017.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans; (PL) 001 Rev. C, Topographical Survey, (PL) 002 Rev. E, (PL) 003 Rev. D, (PL) 004 Rev. D, (PL) 005 Rev. C, Phase 1 Preliminary Risk Assessment and Phase 2 Environmental Site Investigation Report ref: HLEI48837/001R dated March 2017.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are;
 - Whether the proposed variation of condition would result in a 'material change' to the development previously permitted.
 - The effect that varying the condition would have on the character and appearance of the area.
 - The effect that varying the condition would have on local parking provision.

Reasons

3. The approved development has no off-street parking provision and, further to a signed and dated S106 Agreement, with the exception of disabled blue badge holders, occupants of the building are not eligible for residents parking permits in the zone in which the development sits. The Council consider the proposal would materially change the existing permission.

4. The proposed amendment to the plans condition would introduce 4 off-street parking places to the front of the building, replacing a large area of intended soft landscaping and hedging. An intended bin store and central path running to the entrance lobby would remain.
5. Although not referred to directly by the appellant, the Council have referred to the Finney case¹. The Court of Appeal held that an application under Section 73 of the Town and Country Planning Act, 1990 (S73) may not be used to obtain permission that would require a variation to the terms of the “operative” part of the planning permission, that is the description of the development for which planning permission had originally been granted.
6. If the condition were to be varied to that proposed, the description of the development would change as off-street carparking would be introduced and a large area of intended landscaping would be lost. There would be a conflict between that change and the agreed development, and the amendment would fundamentally alter the proposal for which permission has been granted.
7. I recognise that the Council considered the S73 application and neighbours have responded to the proposal, demonstrating that local notification has occurred. However, I conclude that the proposal to alter the plans condition, would constitute a material change to that permission and falls outside the scope of the S73 regulations in this instance.
8. Notwithstanding the above, the Council have stated other reasons for refusal, and I have dealt with these matters below.

Character and appearance of the area

9. Other nearby blocks of flatted development on the same side of the road appear to generally be set back from the highway amongst landscaping, giving the road a verdant character. Whereas that agreed would reflect and enhance that which exists, the creation of off-street parking provision, prominently located across much of the front of the plot, would in my view harmfully disrupt the existing verdant character of the road by virtue of it dominating the building’s frontage.
10. However, given the level of off-street parking on the opposite side of the road, I do not consider that proposed to amount to more than moderate harm.
11. I note that the appellant seeks to justify the proposed variation of condition by referring to that which previously existed on the site. The new development appears to have been largely completed, with the exception of the soft landscaping and sits behind hoarding. That which existed previously has since been largely replaced with the new building and as such carries very limited weight in my decision.
12. Therefore, the proposed variation of condition would not accord with Policy 28 of the Sutton Local Plan, 2018 (SLP), which amongst other things seeks to ensure development proposals respect local context, responds to local character and similarly is not dominated by carparking.

¹ Finney v Welsh Ministers & Others [2019] EWCA Civ 1868

Local parking provision

13. I have no detail with regard how the proposed parking spaces would be allocated or managed. The appellant states that they would intend to create a deed of variation to the current S106 Agreement. However, no such deed of variation or unilateral undertaking is before me to consider. In the absence of any substantive detail, taking a cautious approach I must assume the spaces would be unallocated to specific flats or users.
14. If unallocated, there would likely be competition for those spaces by both residents and visitors. When the intended spaces become full, drivers would seek to park close-by. For much of the time parking nearby would not be possible for any prolonged periods given the residents parking scheme in operation, creating inconvenience for future occupants. Even if parking for short periods, using existing pay and display bays, this would add further pressure to on-street parking provision, as well as additional vehicle circulation on the highway as drivers search for an available space.
15. The appellant contends that conditions could be imposed so as to control how the proposed parking spaces would be allocated or managed. However, in the absence of any such management arrangements or intended eligibility criteria, I am unable to impose relevant conditions that would meet the 6 tests of the National Planning Policy Framework, 2019, particularly relating to their reasonableness or enforceability.
16. I acknowledge that the current building is designed to be Part M (1) compliant and the proposed spaces would assist accessibility to the building for all reliant on a private car. However, that benefit would not outweigh the identified harm and disabled occupants are already eligible to use the residents parking zone.
17. Therefore, for the reasons above I cannot be satisfied that that the proposed variation of condition would not adversely effect on-street parking provision, residential amenity and the local environment, which policies 37 and 37 of the SLP seek to ensure are protected.

Other matters

18. The appellant has provided a supporting letter regarding the saleability of the apartments if parking were to be provided. However, this is not a planning matter. The appellant also states they have prepared a Sustainable Urban Drainage Scheme for the proposed parking area to ensure no adverse effects to drainage. A vehicle crossover is also proposed. However, these matters do not outweigh the harm identified.

Conclusion

19. For the reasons above, the proposed variation of condition would not be allowable under S73. Even if it were allowable under S73, the proposal would conflict with the Development Plan and other material considerations do not outweigh this conflict. Therefore, the appeal is dismissed.

M Scriven

INSPECTOR