

Appeal Decision

Site visit made on 21 June 2021

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2021

Appeal Ref: APP/P5870/W/21/3266912
53 Malden Road, Cheam, London SM3 8QW

- 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 Mark Lawson against the decision of the Council of the London Borough of Sutton.
 - The application, Ref. DM2020/00306, dated 24 February 2020 was refused by notice dated 14 August 2020.
 - The development proposed is the demolition of existing buildings and the erection of two no. three storey buildings containing 13 flats (Class C3).
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition of existing buildings and the erection of two no. three storey buildings containing 13 flats (Class C3) at 53 Malden Road, Cheam, London SM3 8QW in accordance with the terms of the application, Ref. DM2020/00306, dated 24 February 2020 and subject to the conditions in the attached Schedule.

Main Issues

2. The main issues in the appeal are (i) whether the proposed development would fail to make an efficient use of the site thereby prejudicing the future redevelopment of adjacent land including the provision of affordable housing; (ii) the effect of the proposed development on the character and appearance of the street scene of Malden Road; (iii) the effect on the living conditions for the occupiers of No. 9 Tudor Close as regards their outlook, and (iv) whether the application adequately addresses the use of sustainable energy and the provision of acceptable emissions reductions.

Procedural Matters

3. The appellant has submitted a signed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, dated 18 May 2021. As explained in the reasons for my Decision below, I have had regard to the Undertaking in my appraisal of this appeal.
 4. As part of my consideration of the appeal I have agreed with the appellant's request to accept minor amendments to the drawings as I do not consider that they would be prejudicial to any interested parties. I am of the same opinion as regards the updated Sustainability and Energy Statement now before me in this appeal.
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Reasons

Efficient Use of the Site and Provision of Affordable Housing

5. The appeal site forms part of allocation ref. S33 of the Sutton Local Plan 2018, with the remainder adjoining much of the northern boundary and sharing a frontage with Malden Road. The Council considers that the failure to include this land within the scheme would comprise harmful piecemeal development, with consequences including a failure to make the most of the site's potential and the imposition of unacceptable constraints on the future development of the residual area to the north.
6. It is also considered that the partial development of site S33 would preclude the opportunity for affordable housing and family sized accommodation that might have been achievable with a development scheme for the land in its entirety. In the Council's view these shortfalls would conflict with Policies 1, 8 & 40 of the Sutton Local Plan 2018 ('the Local Plan') and Policies 3.4, 3.8, 3.9 & 3.11 of the London Plan 2016 as now incorporated into, or modified by, the similar policies of the published London Plan 2021.
7. I have carefully considered these objections and assessed them in the light of the grounds of appeal. In this instance, the Council has not taken the opportunity to submit an appeal statement or Final Comments and thereby add to the appraisal in the officer's delegated report or counter the appellant's views.
8. I acknowledge the principle of ensuring the efficient use of land to meet the Borough's housing needs, including affordable homes. However, in my view the long-established policy imperative at both national and local levels for the building of new homes, with a particular emphasis on the re-use of brownfield land, indicates that timely and effective delivery may require a degree of flexibility of approach.
9. Whilst I consider that this should apply in the case of the appeal scheme, in the event I do not consider that there is a significant difference between the likely outcome of the Council's aspirations for the contribution of site S33 to its housing needs on the one hand and the current proposal on the other. The appellant's illustrative masterplan submitted with the application is in my view a credible assessment of the development of a net 12 additional dwellings on the appeal site and a potential 8 on the adjoining land.
10. The opportunity for this or a similar provision to be achieved is provided by the appeal scheme excluding facing windows on the elevation adjoining the neighbouring site; facilitating shared use of the access road on the shared boundary by means of the Section 106 Undertaking and a draft deed of easement, and enabling the flanks of the two buildings positioned along the shared boundary to become party walls.
11. Taken together with the provision for the adjoining owner to pay an 'Access Premium' to be valued on the basis of the principles established in the Lands Tribunal decision *Stokes v Cambridge Corporation LT 1961 180 EG 839*, these measures will allow for the holistic development of the whole of S33 in a satisfactory manner consistent with the objectives of paragraph 125 of the National Planning Policy Framework 2021 ('the Framework'); Policies 1 & 40 of

the Local Plan and Policy 3.4 of the London Plan 2016 as subsequently incorporated in the published London Plan 2021.

12. As regards affordable housing, the appellant's Development Viability Report concluded that neither the appeal scheme nor the illustrative 21-unit proposal for the whole of the S33 site would be sufficiently viable to provide on-site affordable housing (or a contribution towards an off-site provision) or the full 50% requirement of 3-bedroom family units. This does not appear to have been disputed by the Council and overall I therefore see no reasonable basis for the Council's assertion of a harmful conflict with Local Plan Policies 1, 8 & 40; Policies 3.4, 3.8, 3.9 & 3.11 of the London Plan 2016 as subsequently incorporated in the published London Plan 2021, and paragraph 125 of the Framework.

Character and Appearance

13. On this issue the Council argues that the northern flank of proposed building Block A would be of a poor design that would have a detrimental effect on the character and appearance of the Malden Road street-scene. It is considered that even though an amended plan has provided 'false windows' and additional brickwork banding, the flank wall would have no character or interest in the public views from Malden Road.
14. However, from the submitted plans and the CGI I am satisfied that the appeal proposal strikes an appropriate balance between on the one hand the need to provide a party wall if the residual development were to take place and on the other hand an appearance that would be acceptable for a more permanent presence on the site. As the grounds of appeal point out, there are other plain flank elevations in the vicinity, including the rendered walls at No. 61 Malden Road and Travers Court at Nos. 23-27. The lower half of the building would also be screened by existing tree and shrub cover and the brick wall on the adjoining land, whilst in most views the side elevation would be read together with the gable design and ample fenestration of the frontage to Malden Road.
15. Overall on this issue, I find that the character and appearance of Malden Road would not be harmed by the northern flank wall of the proposed Block A, and accordingly there would be no harmful conflict with Local Plan Policy 28 and Policies 3.5, 7.4 & 7.6 of the London Plan 2016 as subsequently incorporated in the published London Plan 2021.

Living Conditions for Nearby Occupiers

16. The Council's particular concern on this issue is that a 'three storey building' directly to the rear of the back garden of No. 9 Tudor Close would be overbearing in the outlook from that private amenity space. However, as the appellant's statement points out, Block B is not three storeys but a less bulky two storeys with accommodation in the roof space. The rear wall of the proposed building would also be in the same position as that of the existing building.
17. The proposed gable end feature of Block B is ostensibly a more imposing building in the outlook from the garden of No. 9, but with the latter having a length of about 28m, any visual impact would be much less in the vicinity of dwelling itself. There are also mature trees along the rear boundary of the

garden to provide a screening effect and I note the appellant's argument that the benefit of the elimination of overlooking from the residential unit in the existing appeal site building should be weighed against any perceived harm in terms of loss of outlook.

18. On balance on this issue, I conclude that the effect of the development on the outlook from the garden of No. 9 Tudor Close would not be such as to cause a harmful impact in conflict with Local Plan Policy 29 and paragraph 130 f) of the Framework.

Sustainable Energy and Emissions Reductions

19. The two elements within refusal reason no. 5) in the Notice of Refusal were firstly that insufficient information had been submitted with the application to demonstrate that the proposed development had fully considered compliance with the Mayor of London's revised heating strategy (including the use of sources of sustainable energy) and secondly the absence of a SAP 10 assessment as required by the Mayor's Energy Assessment Guidance.
20. However, in paragraph 4 of this Decision I have accepted the appellant's updated Sustainability and Energy Statement which has addressed these deficiencies. In addition, at my request the appeal parties have agreed conditions (Nos. 5 & 6 in the Schedule attached herewith) which will provide a mechanism to resolve any outstanding points.

Other Matters

21. Local residents have raised a range of concerns which I have read in the individual letters submitted. These include the effect on the privacy of the occupants of Nos. 13 & 14 Pond Hill Gardens; the height and design of the proposed development; the need for new tree planting, and car parking.
22. The officer's report has analysed these matters and concluded that except for No. 9 Tudor Close there would not be a harmful effect on the living conditions for nearby occupiers. Nothing I have seen or read leads me to disagree with this analysis (No. 9 apart), especially as the proposed conditions will have a mitigating effect as regards the relationship of the proposed development to nearby dwellings. These include a requirement for a landscaping scheme which could include tree planting that will have a screening effect to mitigate against a loss of privacy through overlooking from the rear windows of dwellings in Block B.
23. As regards the height and design of the proposed development, I have already made clear that these matters are acceptable and the Council acknowledges that the scheme would provide adequate car parking.

Conclusion and Conditions

24. For the reasons explained above, the appeal is allowed and planning permission is granted for the proposed development.
25. The Council has suggested a comprehensive list of conditions which with a few very minor alterations has been agreed by the appellant. I agree that these conditions are reasonable and necessary to enable the development to be carried out. I have also made minor drafting alterations to improve accuracy

and the consistency of the wording of the conditions. I have additionally deleted suggested condition 26) relating to a Construction Logistics Plan, as it is essentially a repetition of suggested condition 13). I have not included informatives in accordance with the standard practice for appeal decisions, but these will no doubt have been noted by the appellant.

26. A condition requiring the development to be carried out in accordance with the approved plans and details is needed for the avoidance of doubt and is in the interests of proper planning. The visual amenity of the site and its surroundings will be maintained and enhanced by conditions relating to external materials for the development, landscaping, and tree protection. The living conditions for neighbours will be safeguarded by conditions regulating boundary details (which are also relevant to visual amenity); landscaping; hours of work during construction and the management of the project; restrictions on some of the flank windows, and noise insulation.
27. Conditions are also to be imposed to safeguard the protection of the site and its surroundings from flooding, pollution and to minimise the effect on climate change through CO2 emissions. They include those relating to the efficient use of energy and water, air quality, drainage design including sustainability, ventilation to avoid an urban 'heat island', site remediation and contamination, controls on piling during construction and a green roof. A condition is required to investigate, and if appropriate safeguard, heritage assets of archaeological interest. A condition on car parking provision will ensure it is safe and neighbourly, whilst a cycle storage condition will encourage sustainable travel modes.

Martin Andrews

INSPECTOR

Schedule of Conditions

(1) The development to which this permission relates shall begin not later than the expiration of three years beginning with the date of this Decision;

(2) The approved development shall be carried out in accordance with the following drawings/details:

1230-PL2-112 Rev C
Construction Method Statement
Design and Access Statement 1 of 2
1230-EX-01 REV A
1230-EX-02 REV A
1230-EX-03 REV C
1230-EX-04 REV C
1230-EX-05 REV C
1230-EX-06 REV B
1230-EX-07 REV A
1230-PL2-001 REV D
1230-PL2-002 REV K
1230-PL2-003 REV E
1230-PL2-004 REV E
1230-PL2-005 REV C
1230-PL2-006 REV C
1230-PL2-008 REV C
1230-PL2-009 REV D
1230-PL2-010 REV C
1230-PL2-011 REV D
1230-PL2-012 REV C
1230-PL2-018 REV C
1230-PL2-101
1230-PL2-102 REV H
1230-PL2-103 REV C
1230-PL2-104 REV C
1230-PL2-105 REV B
1230-PL2-106
1230-PL2-108 REV A
1230-PL2-109 REV A
1230-PL2-110
1230-PL2-111 REV B
1230-PL2-112 REV E
1230-PL2-118 REV A
136011-FAH-ZZ-00-DR-D-0500- P1
1230-PL2-011 REV D
Planning Statement Final
Schedule of Accommodation BLOCKS AB rev B
Schedule of Accommodation BLOCKS ABCD rev H
Sustainability and Energy Statement
Travel Plan
1230-PL2-013 REV C
1230-PL2-113 REV B

(3) Prior to the commencement of the development hereby approved, samples and a schedule of materials to be used within the external elevations of the buildings and including windows and doors shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved materials;

(4) The development shall not be occupied until the approved car parking arrangement has been laid out within the site in accordance with the approved plans and shall thereafter be permanently retained for its purpose;

(5) Prior to the commencement of development, a revised energy statement incorporating 'as-designed' Standard Assessment Procedure (SAP) outputs based on both SAP2012 and SAP10 emissions factors shall be submitted to the Local Planning Authority and approved in writing which demonstrates how each of the new dwellings will apply the Mayor's energy hierarchy (use less energy, supply energy efficiently and use renewable energy) to achieve at least a 35% reduction in CO2 emissions below the target emission rate (TER) based on Part L1A of the 2013 Building Regulations and at least a 10% reduction in total emissions through fabric energy efficiency measures alone. The revised energy statement shall be prepared in accordance with the Mayor's Energy Assessments Guidance (GLA, October 2018) and Policy SI3(d) of the 'Intend to Publish' draft of the New London Plan 2019 or any successor policy as appropriate and therefore: (i) incorporate a communal low-temperature heating system served by local secondary heat sources in conjunction with a heat pump unless compelling evidence can be provided to demonstrate that this is not technically feasible or commercially viable; (ii) if in-unit gas boilers are proposed, the revised energy assessment should specify ultra-low NOx gas boilers and confirm that the NOx emissions standards the energy assessment should confirm that the NOx emission standards set out in the Mayor's SPG on Sustainable Design and Construction will be met;

(6) Prior to first occupation, as-built' Standard Assessment Procedure (SAP) outputs based on both SAP2012 and SAP10 emissions factors shall be submitted to the Local Planning Authority and approved in writing to demonstrate that the development has been carried out in accordance with the approved details. If the development is unable to meet the required reduction in CO2 emissions through the approved energy strategy, then any shortfall shall be made up through the application of further sustainability measures. All the approved measures shall thereafter be retained for as long as the development is in existence;

(7) Prior to commencement of groundworks (excluding site investigations and demolition), the applicant shall submit a final detailed drainage design including drawings and supporting calculations updated Drainage Assessment Form to the Lead Local Flood Authority for review and approval, aligned with the Fairhurst Drainage Strategy July 2020 and associated drawings. A detailed management plan confirming routine maintenance tasks for all drainage components shall also be submitted to demonstrate how the drainage system is to be maintained for the lifetime of the development;

(8) No building hereby permitted shall be occupied until evidence (photographs and installation contracts) has been submitted to demonstrate that the sustainable drainage scheme for the site has been completed in accordance with the submitted

details. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan for all the proposed drainage components;

(9) Prior to first occupation of the dwellings, a completed Water Efficiency Calculator for New Dwellings shall be submitted to the Local Planning Authority and approved in writing to show that internal potable water consumption will be limited to 110 litres per person per day (l/p/d) based on the Government's national calculation method for water efficiency for the purpose of Part G of the Building Regulations. The Water Efficiency Calculator shall be accompanied by details of the location and type of all appliances or fittings that use water, the capacity or flow rate of any equipment and any rainwater or greywater collection systems incorporated as part of the development;

(10) Prior to the installation of any boundary treatments including walls and fences, full details including drawings, shall be submitted to, and approved in writing by the Local Planning Authority prior to the first occupation of the dwellings. The development shall thereafter be carried out in accordance with the approved details;

(11) Prior to building work starting on site, a completed GLA Overheating Checklist together with details of all proposed measures for minimising the development's potential contribution to the urban heat island (UHI) effect and for avoiding overheating and excessive heat generation arising from future climate change shall be submitted to the Local Planning Authority and approved in writing. The design, layout and ventilation strategy for the development shall be based on the outcome of dynamic thermal modelling and demonstrate compliance with the Mayor's cooling hierarchy as set out in Policy 5.9 of the London Plan;

(12) The first-floor windows of Block B facing properties in Pond Hill Gardens as shown on Drawing No. 1230-PL2-103C shall be obscure-glazed, and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

(13) The development, including demolition and site clearance works, shall not begin until a Construction Logistics Plan /Environmental Statement, to include details of:

- (a) loading and unloading of plant and materials
 - (b) storage of plant and materials
 - (c) programme of works (including measures for traffic management)
 - (d) provision of boundary hoarding, behind any visibility zones of construction traffic routing.
 - (f) hours of operation
 - (g) means to control dust
 - (h) means to control noise
 - (k) means to prevent deposition of mud on the highway,
- has been submitted to and approved by the Local Planning Authority. The development shall be constructed in accordance with the approved statement;

(14) The site and building works required to implement the development shall be only carried out between the hours of 08.00 and 18.00 Mondays to Fridays and

between 08.00 and 13.00 on Saturdays and not at all on Bank Holidays and Sundays;

(15) No development approved by this planning permission shall commence until a strategy to deal with the potential risks associated with any contamination of the site has been submitted to, and approved in writing by, the Local Planning Authority. This strategy will include the following components:

1. A preliminary risk assessment which has identified: all previous uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources, pathways and receptors; and potentially unacceptable risks arising from contamination at the site. (It is noted that the submitted preliminary report would fulfil part 1 of this condition);
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;
3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken;
4. A verification plan providing details of the data that will be collected to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved;

(16) Prior to any part of the permitted development being occupied a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met;

(17) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved;

(18) No infiltration of surface water drainage into the ground shall be permitted other than with the written consent of the Local Planning Authority. The development shall be carried out in accordance with the approved details;

(19) In order to identify and safeguard heritage assets of archaeological interest, no demolition or development shall take place until a stage 1 written scheme of investigation (WSI) has been submitted to and approved by the Local Planning

Authority in writing. For land that is included within the WSI, no demolition or development shall take place other than in accordance with the agreed WSI, and the programme and methodology of site evaluation and the nomination of a competent person(s) or organisation to undertake the agreed works. If heritage assets of archaeological interest are identified by stage 1, then for those parts of the site which have archaeological interest a stage 2 WSI shall be submitted to and approved in writing by the Local Planning Authority. For land that is included within the stage 2 WSI, no demolition or development shall take place other than in accordance with the agreed stage 2 WSI which shall include A, B & C as follows:

- A. The statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works;
- B. Where appropriate, details of a programme for delivering related positive public benefits;
- C. The programme for post-investigation assessment and subsequent analysis, publication & dissemination, and deposition of resulting material. this part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the stage 2 WSI;

(20) No piling shall take place until a Piling Method Statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the Local Planning Authority in consultation with Thames Water. Any piling shall be undertaken in accordance with the terms of the approved piling method statement;

(21) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated by a piling risk assessment that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details;

(22) A scheme of noise insulation/reduction shall be submitted to ensure that the noise level of 35 dBLAeq,16 hour in living rooms and bedrooms during the daytime (0700 to 2300 hours) and 30 dBLAeq,8 hour and 45 dBLAmax during the night-time (measured with F time-weighting and between 2300 and 0700 hours) in bedrooms in accordance with BS8233:2014 shall not be exceeded. Where these levels cannot be met with windows open appropriate acoustic ventilation shall be provided so that the room can be sufficiently ventilated. The acoustic performance of any passive vent, variable speed mechanical air supply unit or whole house ventilation shall be sufficient to ensure that the noise level standards given above are not compromised. The scheme shall be implemented before the buildings are first occupied and thereafter permanently retained;

(23) Prior to the commencement of development details shall be submitted and approved by the Local Planning Authority for all Non-Road Mobile Machinery (NRMM) to be used on the development site. All NRMM shall meet as minimum the Stage IIIB emission criteria of Directive 97/68/EC and its subsequent amendments unless it can be demonstrated that Stage IIIB equipment is not available. An

inventory of all NRMM must be registered on the NRMM register <https://nrmm.london/user-nrmm/register>. All NRMM shall be regularly serviced, and service logs kept on site for inspection. Records shall be kept on site which details proof of emission limits for all equipment. The development shall be constructed in accordance with the approved details;

(24) Prior to the occupation of the development, full details of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All hard and soft landscaping and tree planting shall be carried out in accordance with the approved details and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards (in particular, BS 3882: Specifications for Topsoil, Recommendations (2015) and BS 8545: Trees from Nursery to Independence in the Landscape, Recommendations (2014) or other recognised codes of good practice). The works shall be carried out prior to the occupation of any part or relevant phase of the development or in accordance with the timetable agreed with the Local Planning Authority. Any tree(s) or plants that (within a period of five years after planting) are removed, die, or (in the opinion of the Local Planning Authority) are damaged or defective shall be replaced as soon as is reasonably practicable with others of a similar size/species/number as originally approved, unless the Local Planning Authority gives its consent to any variation;

(25) All tree(s) on and adjacent to the site shown to be retained shall be protected in accordance with the Arboricultural information submitted with the Application (Arboricultural Method Statement and Tree Protection Plan) and follow recommendations in British Standard BS 5837: Trees in Relation to Design, Demolition and Construction - Recommendations (2012). There shall be no materials stored within Construction Exclusion Zone (CEZ), and the Tree Protection Fencing (TPF) and other measures shall only be removed on completion of development. On completion of development, the applicant (their heirs or successors in title) shall submit photographic evidence of compliance with BS5837:2012;

(26) Prior to the commencement of the development (excluding demolition works), full details of the secure cycle storage facilities shall be submitted to, and approved in writing by, the Local Planning Authority which shall show their positioning within the site, the size and materials of the enclosure and the means of access. The approved details shall be implemented on site prior to the first occupation of the development hereby approved and thereafter permanently retained in accordance with the approved details;

(27) Prior to building work starting on site, detailed proposals for accommodating a green roof as part of the design and layout of the development shall be submitted to the Local Planning Authority and approved in writing. This shall include design/product specifications, the proposed implementation timescale and arrangements for on-going maintenance. Where a green roof is not proposed, the submitted evidence shall demonstrate why this would not be feasible or viable having regard to existing site constraints;

(28) Prior to first occupation of the development, documentary evidence shall be submitted to the Local Planning Authority and approved in writing to demonstrate

that any proposed green roof walls have been installed in accordance with the approved details;

(29) Prior to the commencement of development, documentary evidence must be submitted to the Local Planning Authority and approved in writing to show that the development will achieve an improved Green Space Factor (GSF) score of at least +0.2 compared to the baseline GSF score for the site prior to redevelopment. The council's GSF scoring system set out in Sutton's 'Technical Guidance Note - Building a Sustainable Sutton' (June 2018) shall be used for this purpose. The development shall be carried out in accordance with the approved details and thereafter retained.