



Appeal Decision

Site visit made on 20 September 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/Z3635/W/21/3285212

**Sunbury Cross Ex Services Association Club, Crossways,
Sunbury-on-Thames TW16 7BG**

- 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 SUN EX-21 Ltd against the decision of Spelthorne Borough Council.
 - The application Ref 20/01506/FUL, dated 8 December 2020, was refused by notice dated 29 April 2021.
 - The development proposed is the demolition of the former Sunbury Ex-Servicemen's Association Club and redevelopment by three residential buildings of 4-storey, 6-storey and 9-storey comprising 69 flats with associated car-parking, cycle storage, landscaping and incidental works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's second reason for refusal relates to the lack of any mechanism to secure a contribution towards on-site open space or a financial contribution towards off-site provision. The appellant submitted a Unilateral Undertaking (UU) during the appeal that seeks to secure provision of affordable housing, a contribution towards open space provision and mitigation measures to enable a reduced on-site parking provision. I note that the Council stated that the UU is unacceptable and fundamentally flawed. This is a matter I return to below.
3. The appellant has submitted some amended drawings, relating to stairwells, lifts and risers which are to ensure the development complies with the Building Regulations. They do not affect the external appearance or size of the building or size of the flats. The Council has not raised an objection and I am satisfied that my acceptance of these amendments does not prejudice other interested parties.
4. A revised National Planning Policy Framework (the Framework) was published by the Government between the determination of the planning application and the appeal coming before me. I am satisfied that this latest version of the Framework does not raise any new considerations in relation to this appeal.

Main Issues

5. The main issues are the effect of the development on (a) the character and appearance of the area; (b) the living conditions of future occupiers, with

particular regard to outlook and quality of environment; and (c) provision of car parking.

Reasons

Character and Appearance

6. The appeal site comprises the existing two storey club building to the front of the site, with an access road to the south and the former car parking area to the rear. The site is surrounded by a mix of uses including residential and commercial. The nearest residential buildings are four storeys in height with other buildings generally being taller. The site is bound to the south by the Staines Reservoir Aqueduct. A line of trees shields the Tesco car park on the other side of it. The area has an urban character.
7. The three proposed buildings, Block A (9 storeys), Block B (6 storeys) and Block C (4 storeys) run east to west across the site. The buildings sit towards the south of the site, with the new access running along the northern boundary.
8. These large buildings would add height and physical bulk and presence to the site. In addition, the proposed layout is dominated by car parking and hard surfaces. As a result, soft landscaping and tree planting would largely be confined to the margins of the site, on those strips of land which remain after everything else would have been installed. There are some small areas of planting along the access road which also accommodates parking spaces but it is not clear whether there is sufficient space for the proposed trees to survive or thrive.
9. Although there is no significant greenery to maintain on the site and notwithstanding the nature of the area or the intention to provide sedum roofs and roof terraces, there is the opportunity to positively enhance the site's contribution in this regard. Well-designed and landscaped parking and areas of hard surfacing can be sensitively integrated into a layout so that it does not dominate the development. However, that is not the case here.
10. Given the heights of the proposed buildings, the quality of the space between them and how that space is experienced are important considerations. If the space between buildings is too limited, then these areas can become overshadowed at certain times of the day and feel hemmed in, becoming unattractive areas in which to spend time.
11. The distances between each of the three proposed buildings is constrained by the size of the site. Thus, there will be times of the day when these areas are in shadow from one or other of the blocks. In the case of the space between Blocks B and C the quality of the area would also be compromised by being dominated by car parking. The parking spaces would be positioned directly outside the ground floor terraces of Flat 15 (Block B) and Flat 1 (Block C).
12. Between Blocks A and B there would be some parking adjacent to the access road but the space between these blocks would be largely accommodated by a children's play area. Whilst such areas require surveillance there is little separation between the play area and terrace areas serving Flat 27 (Block A) and Flat 14 (Block B).

13. The position of Block A, the largest and most prominent building, should create a sense of 'arrival'. However, this is somewhat muted as the entrance to the building would be set behind two parking spaces with a footpath between them leading to the front of the building.
14. I note that some of the spaces for disabled motorists are not particularly well sited in terms of their proximity to the building entrances. To my mind this is a further indication that the site layout has been driven by factors other than the needs of future occupiers.
15. All of the above factors affect how people experience and use the site. I therefore do not agree with the appellant that the proposal would create a sense of place. The layout would be largely dominated by buildings and heavily influenced by hard surfacing to provide access and parking areas. The spaces between the buildings would not be attractive areas in which to spend time and there is insufficient space given over to provide for meaningful, long-term landscaping. As a result, the proposal would create a sterile environment that would harm the character and appearance of the area.
16. The proposal would therefore be contrary to Policy EN1 of the Council's Core Strategy and Policies Development Plan Document 2009 (DPD) which, amongst other things, seeks to ensure new development is of a high standard of design that creates attractive places that make a positive contribution to the area. The proposal would also be contrary to Paragraph 130 of the Framework, which amongst other things, seeks to ensure developments are sympathetic to local character.

Living Conditions

17. Given the need to accommodate car parking and the overall size of the site, Flats 1 and 3 (Block C) and Flat 15 (Block B) would have their outside terraces directly adjacent to car parking spaces. Although a narrow hedge is shown as separating the parking spaces from these narrow terraces, cars will be parked immediately in front of these areas, generally dominating the outlook and environment for these occupiers. For Flats 1 and 15 the outlook from their internal accommodation would also be largely dominated by parked cars.
18. Aside from outlook, there would be a general disturbance to future residents that such close proximity would generate, such as cars coming and going, or doors opening/closing. There would also be fumes from cars. Despite the proposed hedging, headlights would be likely to shine into all the habitable rooms of Flat 15 and the main living room and largest bedroom of Flat 1.
19. On upper storeys, balconies serving the 10 flats on the western side of Block B and the 6 flats on the eastern side of Block C would principally overlook the sterile communal car parking area below.
20. Blocks A and C are set closest to the site's southern boundary. The boundary is marked by galvanised palisade fencing, whose proximity will create a sense of enclosure to Flats 36 and 37 (Block A) and Flats 1 and 2 (Block C). Whilst its appearance could be softened by planting this would undoubtedly add to the sense of enclosure the proximity to the boundary would already engender. In the case of Flat 2 (Block C), the terrace would be close to the site's western boundary and would have the upper floor balconies directly above it, resulting in a particularly enclosed area with poor outlook.

21. I note that the flats have been designed with dual aspect and on the upper floors there would not be a sense of enclosure. As previously noted, each block would have its own roof terrace. However, I find that a number of the proposed flats, particularly the six ground floor flats I have identified above, would have a poor outlook and/or offer a poor environment for future occupiers.
22. I conclude that the proposal would not provide satisfactory living conditions for all future occupiers. The proposal would therefore be contrary to Policy EN1 of the DPD which, amongst other things, seeks to ensure developments do not adversely affect living conditions. In this respect the proposal would also be contrary to Paragraph 130 of the Framework, which amongst other things, seeks to ensure developments create a high standard of amenity for existing and future users.

Car Parking

23. The Council's Residential Parking Standards indicate 92 spaces would be required to serve the development. Based on census car ownership by accommodation type, the Highway Authority (HA) accepts that the development could generate a demand of 58 spaces, which is more than the 32 provided on site for residents.
24. The HA has not raised an objection on safety, capacity or policy grounds. However, their observations are made on the understanding that a car club vehicle on site would help to reduce demand by future occupiers from owning a car and any excess parking demand could be accommodated within the adjacent multi-storey car park.
25. I have been provided with some information on the existing car club scheme operating in the wider Surrey area. I have been advised that discussions are on-going for the appeal site to host a vehicle. However, there is no information to explain why the scheme has not thus far extended to Sunbury or more importantly how probable it is that allowing this appeal would trigger the expansion of the scheme. The UU indicates that if the site owner is unable to obtain the interest of a car club operator, then subject to Council approval, the car club scheme would not come forward. As I have little substantive evidence that a car club operator would be reasonably likely to come forward or that a scheme would be sustained as a result of this development, this is a major cause for concern.
26. Furthermore, it doesn't seem to me that a commitment to fund residents' membership for two years is particularly long term or that consideration has been given to what would happen after those two years.
27. The nearby multi-storey car park might accommodate short term overflow parking from the site, but the Council indicate that there are no permits which residents could purchase that would make it a more viable longer-term option for overflow parking. Furthermore, although the UU seeks to restrict owners from being able to purchase any such permit, a restriction of this nature does not appear to be a restriction on the appeal property, which is the "land" for the purposes of s106. Therefore, if such a provision is merely a personal undertaking it would not be capable of being registered as a local land charge.
28. The appellant indicates that the parking spaces provided on site for future residents would be allocated preferentially to residents who are blue badge

holders, then the occupiers of the 3-bedroom flats followed by the 2-bed flats. However, it is not clear exactly which flats would be provided with spaces and whether or not this would include those earmarked to be affordable units. I note that the UU does not provide any mechanism or controls on how spaces other than for those with a Blue Badge would be allocated.

29. The development would generate a potential parking demand of 58 cars. For a scheme comprising 32 spaces to be considered acceptable, the mechanisms to suppress that demand need to come forward. Given the concerns outlined above, I cannot rule out the possibility of there being a demand greater than 32 spaces and that some overspill parking would occur.
30. The limited alternative parking options nearby and the yellow lines on Crossways and Staines Road West, would act as a deterrent to some potential future occupiers. However, there is no controlled parking zone in the area, and so car ownership and parking cannot be completely controlled by the proposal.
31. Forest Drive, which appears to offer some of the closest unrestricted on-street parking to the site, is more than 200m from it, and so was excluded from the parking survey. I walked to Forest Drive from the site, via Crossways and Staines Road West. It is a relatively straightforward and flat route, so despite it being over 200m from the appeal site, it could be somewhere that would attract overflow parking.
32. Although my site visit was only a snapshot on a Tuesday morning, there were limited spaces available on Forest Drive. This suggests to me that parking would be likely to be at a higher premium in the evenings, when more people are likely to be at home. Any overflow parking from the appeal scheme, whilst not a highway safety concern, would likely add to the fierce competition for parking spaces and be an inconvenience to others in the locality.
33. The main parties agree that although the site is not within the Town Centre, its proximity to it and thus other, sustainable modes of transport, enables a discretionary approach to be taken towards the level of on-site parking provision. However, for the above reasons I am not satisfied that the 32 car parking spaces together with the proposed mechanisms to counter demand would be adequate in this instance. Accordingly, the proposed provision of car parking would not be acceptable.
34. I therefore conclude that the development would not comply with Policy CC3 of the DPD which, amongst other things, seeks to ensure appropriate provision is made for off street parking.

Other Matters

Planning Obligation

35. The appellants have produced a UU which seeks to address: affordable housing provision; a contribution towards open space provision; and mitigation measures to facilitate a reduced on-site parking provision.
36. The UU would provide for 23 affordable rented units and 12 shared ownership units. The UU does not contain nomination rights in favour of the Council for these units. As such there would be no guarantee that people on the housing register would be chosen to live in the flats and thus no guarantee the Council's objective of delivering housing to those most in need would be met.

37. The appellant has suggested a condition that would oblige the owner and/or a Registered Social Landlord (RSL) to enter into a nomination agreement with the Council. However, the advice in the Planning Policy Guidance¹ is that a positively worded condition that requires a party to enter into some form of obligation is unlikely to be enforceable.
38. Given that there is no RSL party to the UU and there are no Council nomination rights it seems to me that there is much uncertainty that appropriate affordable housing would be sufficiently secured through the UU.
39. The UU would also make a financial contribution of £140,000 towards the upgrading of the Escot Road pocket park. This is required in order to ensure the development complies with Policy CO3 of the DPD, which seeks to ensure the provision of open space for new development. As a result, the Council is content that this would overcome the second reason for refusal. I have no reason to conclude otherwise.
40. I have already outlined my concerns in relation to the ability of the UU to secure sufficient mitigation in relation to parking provision.
41. I can only accept the UU in its totality and am unable to make amendments to it. Given my findings above, I conclude that the UU is not acceptable and so I have not taken it into account in my final decision.
42. The absence of one of the site owners as a signatory to the UU adds further concerns as to the overall robustness of the UU. However, given my conclusions on the contents of the obligation, it is not necessary for me to make a determination on whether or not this omission would render the document unenforceable.

Other Considerations

43. The site is identified in the emerging Local Plan for housing. However, the Council has not objected to the loss of the existing building/use nor the principle of the proposed development, having resolved to approve a different scheme for 47 units on the site. Therefore, this allocation does not in itself mean that the scheme is acceptable and does not absolve me from making an assessment as to its effects in regard to the main issues of the case.
44. The proposal is said to meet both the British Research Establishment guidelines for sun and daylight and the Nationally Described Space Standards. Furthermore, I am advised that it would ensure an appropriate sustainable urban drainage scheme and would not pose a flood risk. In spatial terms, the scheme would provide sufficient garden space to meet the policy requirements. However, compliance with these matters would be expected in order for a development to be considered acceptable and therefore are not factors that should weigh positively in the scheme's favour.
45. The scheme includes solar panels, and the additional planting may offer some biodiversity gains. I attribute a small amount of weight to these benefits.

¹ Paragraph: 010 Reference ID: 21a-010-20190723

Planning Balance and Conclusion

46. The Council accepts that it is unable to demonstrate a 5-year supply of housing land. The Council's Statement indicates that it can demonstrate 4.5 years of housing land supply, which represents a modest shortfall. The appellant has also drawn to my attention the Council's failure to meet housing delivery test targets. Accordingly, Paragraph 11(d) of the Framework is engaged. On this basis, the policies which are most important for determining the appeal should be considered to be out of date.
47. As a windfall site that seeks to make more efficient use of the land and boost supply, the proposal would accord with the Framework's objectives for housing. However, the Council's Planning Committee has recently resolved to grant planning permission on the site for 47 units, including affordable units. The scheme which is before me would therefore represent an uplift of 22 units on that scheme.
48. Whilst the scheme for 47 units is only a Council resolution at this stage, it nevertheless provides a strong indication that in all probability the site could deliver this number of units, regardless of the outcome of this appeal. Therefore, to avoid double counting, it is the additional 22 units provided by the appeal scheme to which I should have most regard in any balance.
49. The provision of these additional units would make a moderate contribution towards housing supply generally in the area. The social benefits of this would attract moderate weight in the balance. The scheme would also lead to a time-limited economic benefit during the construction phase, which may give rise to extra local employment. Future occupiers may make a contribution towards supporting the services in the surrounding and wider area. These economic benefits carry moderate weight in my assessment.
50. Conversely, the proposal would be harmful to the character and appearance of the area, fail to provide adequate living conditions for all the future occupants and would not provide sufficient parking for the development. Furthermore, as I am unable to give weight to the UU, the absence of a policy compliant scheme in terms of affordable housing would also weigh against the proposal. Together these harms would be wide ranging and long lasting and as a result are worthy of significant weight.
51. I therefore conclude that the cumulative adverse impacts of the proposal would significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the Framework as a whole. The presumption in favour of sustainable development therefore does not apply to this case.
52. Notwithstanding that there is compliance with some development plan policies, it is my finding that there is conflict with the development plan as a whole. There are no other considerations, including the provisions of the Framework, that outweigh this conflict.
53. For the reasons given above, I conclude that the appeal should be dismissed.

Stewart Glassar

INSPECTOR