



Appeal Decision

Site visit made on 23 January 2023

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2023

Appeal Ref: APP/A5840/W/22/3291275

Barry Parade, Barry Road, London SE22 0JA

- 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 Jack Bispham of Panther Securities PLC against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/2238, dated 6 July 2018, was refused by notice dated 18 September 2021.
 - The development proposed is demolition of existing single storey buildings, construction of a new mixed use development (including change of use), on predominantly 4 floors comprising 1no A2 unit with the balance of the commercial space designated as A1 use, with 13 flats for private sale/rent above.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by the Council of the London Borough of Southwark against Mr Jack Bispham of Panther Securities PLC. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the proposed development on affordable housing provision; transport; greenhouse gas emissions; and tree provision in the area.

Reasons

4. The Council considered a wide range of matters in assessing this proposal, including matters subsequently raised by objectors to the appeal. In January 2020, the proposed development was considered to be acceptable by Council officers, subject to the signing of a suitable s106 planning obligation.
5. Based on the Officer report and Addendum, Members agreed and granted planning permission, subject to conditions and the completion of the s106 planning obligation, at their meeting on 29 January 2020. The Council also specified that were the s106 planning obligation not completed by the end of March 2020¹ that the Director of Planning was authorised to refuse planning permission.
6. The planning obligation would need to include the provision of specified affordable housing units, and a viability review mechanism potentially leading

¹ Paragraph 23 of the Addendum to the Officer report

to the provision of further affordable housing should progress with the proposal be slower than expected; a wheelchair user accessible unit; various works to the public highway in the area; car club membership for 3 years for eligible residents; and, financial contributions for carbon offsetting, the potential loss of two specified trees on adjoining land and a shortfall in private amenity space for some units, in order to be consistent with the Committee resolution.

7. The appellant was satisfied with the parameters of the obligation, apart from the late inclusion of the viability review mechanism², which they considered to be unnecessary and unsupported by policy. Whilst discussions regarding this matter and others continued to take place they were not resolved and planning permission was refused on 18 September 2021, significantly later than the resolution of Members had specified.
8. Notwithstanding the past disagreement between the main parties over this issue, the appellant now accepts that with reference to the current development plan for the area, a viability review mechanism is necessary. As part of their appeal, the appellant has submitted a signed s106 planning obligation that includes a viability review mechanism, amongst other things.
9. From the evidence and my observations on site, I am satisfied the proposal would be acceptable subject to conditions and a suitable planning obligation. I am also satisfied that the submitted planning obligation would be a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development³.
10. I note the Council's comments on the submitted planning obligation, including confirmation that the increased Carbon Green Fund contribution is acceptable.
11. However, I also note the Council's comments regarding the Boundary Tree Plan in the Drawings attached to the planning obligation. With reference to the Definitions and Interpretation part of the planning obligation, the Tree Contribution concerns Boundary Tree T5 and Boundary Tree T6. These are trees within the Gardens Conservation Area that may be adversely affected by the proposed development. Both Boundary Tree T5 and Boundary Tree T6 are said to be shown on the annexed plan numbered 3886 PL00202.
12. There is no reference number on the Boundary Tree Plan attached to the signed planning obligation, and whilst Tree T6 is just visible, Tree T5 is not shown at all. The reference numbers of the other plans attached to the planning obligation do not match 3886 PL00202 and trees identified as T5 and T6 are not shown on them. Furthermore, according to the Council's Decision notice refusing planning permission, and the list of drawings submitted by the appellant, there is no plan numbered 3886 PL00202.
13. Moreover, Paragraph N.5.2 of Annexe N: Planning Obligations of the Procedural Guide⁴ states that 'The planning obligation must give details of each person's title to the land...In written representations cases...the applicant or appellant will need to provide evidence of title to the Inspector. Normally this is in the

² Paragraph 22 of the Addendum to the Officer report

³ Paragraph 57 of the National Planning Policy Framework 2021 (the Framework) and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

⁴ [Procedural Guide: Planning Appeals – England \(updated 21 December 2022\)](#)

form of an up to date copy entry or entries from the Land Registry.’ There is no evidence of title alongside or within the signed planning obligation.

14. With reference to Government Guidance on Planning Appeals, I am not satisfied that the submitted planning obligation is legally sound or complete and thereby effective. It therefore carries no weight in my determination.
15. For these reasons, the proposed development would adversely affect affordable housing provision; transport; greenhouse gas emissions; and tree provision in the area. It would, therefore, conflict with Policies P1 (social rented and intermediate housing), P20 (conservation areas), P21 (conservation of the historic environment and natural heritage), P50 (highways impacts), P61 (trees), P70 (energy) and IP3 (community infrastructure levy (CIL) and section 106 planning obligations) of the Southwark Plan 2022; and, with Policies DF1 (delivery of the plan and planning obligations) and H5 (threshold approach to applications) of the London Plan 2021⁵.

Conclusion

16. For the reasons given above, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR

⁵ Spatial Development Strategy for Greater London March 2021