

Appeal Decision

Site visit made on 17 April 2023

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

an Inspector appointed by the Secretary of State

Decision date: 17th May 2023

Appeal Ref: APP/P5870/W/22/3305929

Land rear of 32-34 Victoria Road, Sutton SM1 4RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on application for planning permission.
 - The appeal is made by Mr Matt Power, Spring Developments, against the Council of the London Borough of Sutton.
 - The application Ref. DM2022/00599 is dated 28 March 2022.
 - The development proposed is demolition of the existing garage and outbuildings, erection of one single-storey two bedroom dwelling with a bike store and associated landscaping.
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Application for Costs

1. An application for costs was made by Mr Matt Power, Spring Developments, against the Council of the London Borough of Sutton. This is the subject of a separate Decision.

Decision

2. The appeal is allowed and planning permission is granted for the demolition of the existing garage and outbuildings; the erection of one single storey two-bedroom dwelling, with a bike store and associated landscaping on land to the rear of 32-34 Victoria Road, Sutton in accordance with the terms of the application, Ref. DM2022/00599, dated 28 March 2022 and subject to the conditions in the attached Schedule.

Main Issue

3. The appeal application was not determined by the Council. In its appeal statement the Council refers to two reasons for the refusal of the application in the event it had issued a formal decision notice. However, I consider that the single main issue in the appeal is the effect of the proposed dwelling on the character and appearance of the area. In using the term 'area', I refer both to the 'Area of Special Local Character' ('the ASLC') of which the site forms a small part and the adjacent 'Green Corridor' which separates the residential area from the railway.

Reasons

4. The appeal scheme is the latest of a number of residential redevelopment proposals that have not found favour with the Council and in one case at appeal. Previous issues have included an adverse effect on the outlook from the
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garden of No. 30 Victoria Road as a result of the then proposed two storey development. The Council acknowledges that the appeal scheme has resolved these issues but regards the reduction in scale to the single storey dwelling with a flat roof now put forward as having '*a detrimental impact on the character and setting of (the ASLC) of which the site forms part*'.

5. The special characteristics of the ASLC are seen in the period properties of Victoria Road to the north east of the site and Alfred Road to the north west - these being the closest roads to the site, which fronts Albert Road. However, this part of Albert Road that separates the residential area from the open space of the Green Corridor does not have a conventional street scene with a definable character. This is because it is a 'frontage' that includes flank elevations and rear gardens, as opposed to a row of houses' principal elevations.
6. Furthermore, at the western end of Albert Road on the corner of Alfred Road (leading to the main Carshalton Road), Nos. 37 & 39 are a pair of semi-detached houses of a modern design on the south side of the road. Opposite is another semi-detached pair, Nos. 16 & 16A, of more traditional appearance. Immediately to the east of No. 16A's garden is a parking area for another modern semi-detached pair, Nos. 40 & 42. There is then the appeal site with its unsightly garages and sheds, with the remaining frontage to this part of Albert Road comprising the wall/fence to the rear garden of No. 34 Victoria Road and its single and two storey extensions attached to the main three storey end of terrace house, the roof of which includes flat roofed dormers.
7. Along this frontage, Albert Road is not properly made up and with its poor surface and absence of kerbs has the appearance of a sub-standard and temporary access, in part to facilitate the unsightly random parking on the grass area of the Green Corridor. This area itself has its grass largely worn away by the vehicles and with its untidy appearance and the presence of large pieces of debris it confers little or no visual amenity other than its openness.
8. Nor does the existing built form that I have referred to in paragraph 6 above mitigate the poor quality of the urban environment. The fairly recently developed semi-detached pairs of Nos. 40 & 42, and in particular Nos. 37 & 39, do not appear to have been designed to appear noticeably in keeping with the ASLC. The appeal site itself is clearly derelict and as such makes a markedly negative contribution to the locality. The rear additions to No. 32-34 Victoria Road are especially prominent and whilst I accept they need to be proportionate to a large host building their effect is one of a large scale that draws the eye as unduly dominating the corner with Albert Road.
9. With this very mixed context and the fact that because of its east/west orientation this part of Albert Road is read separately from Victoria Road and Alfred Road, I consider that there is some scope for choice of the design and therefore appearance of any new dwelling. And with the scheme for a two storey dwelling under reference DM2019/02029 dismissed on appeal, the only remaining option available appears to be that of a single storey dwelling. Without this the appeal site will continue to blight the surroundings that, as I have indicated, are already challenging in terms of the environmental quality of the southern edge of the ASLC and its immediate setting.

10. Accordingly, it is not unreasonable for the appellant to adopt a pragmatic approach towards the design detail and appearance of development. This appears to have some extent been recognised by the Council in its appraisal of the scheme under DM2019/02029 with the acknowledgement that '*..... that there is not a uniform character and style of housing within the surrounding area*'. And as the grounds of appeal correctly point out, the existing flat roof garages and sheds are already there. They are not 'housing' but they do form part of the character and appearance of this part of the ASLC. The new dwelling with its flat roof would be similar in scale and form but very different as regards the site's contribution to the area.
11. Although contemporary, the design and proposed external materials are of a good quality and not so modernistic as to be a jarring feature that would be perceived as being harmfully out of place. The latter might have been the case in other parts of the ASLC, but I am satisfied that the context in which the proposed dwelling would be read is such as to ensure that the effect of the development would be one of not only an absence of harm but also an enhancement to the site and its immediate surroundings.
12. The policies cited by the Council in its deemed refusal reasons are Policies 1, 7, 28 & 30 of the Sutton Local Plan 2018 together with Policies D3 and D4 of the London Plan 2021. Reference is also made to the Council's SPD 14: 'Creating Locally Distinctive Places' and to Government policy in the National Planning Policy Framework 2021 ('the Framework'). I acknowledge that all of these (or more accurately in some cases, sections within them) are relevant, albeit the appellant's reference to paragraph 60 of the Framework is now out of date.
13. However, within this ambit of policy the essential point of contention in the application and this appeal is that the Council is unwilling to accept that the appearance of the proposed dwelling would be acceptable within the ASLC. This follows the Council's previous acceptance that a two storey dwelling (and therefore of an entirely different appearance) would have been acceptable had it not been for its impact on the living conditions of neighbours.
14. Whilst it is correct to say that this site does not have to be redeveloped, in my view it is also reasonable to conclude that without development the long term retention of the garages and sheds is probable. And as long as these structures are there, harm will be caused to the character and appearance of the ASLC. This harm would be removed by the development and although the Council takes the view that the adverse effect would continue in a different form, I consider that the character and appearance of this part of Albert Road and its setting to the south are such that the development, which is of a good design, would not be out of keeping with its surroundings. On the contrary, it would be read as an improvement and visually harmonious addition to the 'street scene' insofar as this description can be applied in this instance. For this reason there would be no conflict with the policies referred to in paragraph 12 above.
15. Furthermore, it is axiomatic that this planning judgement has precluded the Council from adopting a positive approach to the development as required in its own policies and in the Framework. Having also had regard to all other matters raised, I shall therefore allow the appeal and grant planning permission. The Council's appeal statement included a list of conditions if the appeal is allowed and the appellant does not appear to have made any comments on these.

16. A condition requiring the development to be carried out in accordance with the submitted plans and documents is needed for the avoidance of doubt and is in the interests of proper planning. In imposing this condition I have selected the amended drawings that show an improved outlook to the second bedroom.
17. The building's design, which includes a sedum roof, already has excellent sustainability credentials and these will be reinforced by conditions to include provisions for the capture of solar energy; achieve targeted reductions in carbon emissions; regulate water drainage and reduce flood risk; ensure adequate cycle storage and provide for water efficiency.
18. Conditions are also appropriate to safeguard visual amenity and the living conditions for future occupiers and neighbours. These include the limitation of the hours of working during the construction period; details of refuse storage and recycling; regulation of boundary treatment, and the assessment and prevention of pollution. Safety will be enhanced by a condition to require a Fire Safety Certificate.
19. However, whilst I acknowledge the aspirations of Local Plan Policy 26, I consider that the suggested condition requiring the creation of a biodiversity habitat is too onerous in terms of its requirement and future management for the very small suburban garden that forms part of the appeal scheme. As such it would not meet the standard tests for conditions which include reasonableness, necessity, relevance to the development permitted and enforceability. The latter test would also preclude the condition requiring the placement of brick rubble/sand and log piles on the proposed green roof. I also consider that the condition regarding external lighting is again too onerous in its present form. I have therefore replaced it by a simpler condition which, when the details are agreed, should be more proportionate to the construction of a single dwelling in this location.
20. To the extent that the three suggested conditions in the above paragraph are considered by the Council to be supported by the Site of Importance for Nature Conservation to the south, I consider that the adverse effect of the current condition this part of the Green Corridor and its use for car parking (including vehicle lights that are likely to be used during early winter mornings and evenings) is a significant constraint on the relevance and reasonableness of that justification.

Martin Andrews

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this Decision;
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documentation: **Drawing No. Series A4265: Plans:** 1000-P1 Existing Site Plan; 0001-P1 OS Map & Location; 1100 P1 Existing Ground Floor Plan; 1200-P1 Existing Elevations A-B; 1201-P1 Existing Elevations C-D; 1300-P1 Existing Section - Streetscape; 3000-P1 Proposed Site Plan; 3100-P2 Proposed Ground Floor Plan; 3200-P1 Proposed Elevations A-B; 3201-P2 Proposed Elevations C-D; Proposed Section – Streetscape 3300-P1; 3301-P1 Proposed Materials; 3302-P1 Proposed Amenity; 3303-P1 Proposed UGF Value; **Documents:** SuDS Report C2718-R1 Rev, A prepared by Nimbus; London Sustainable Drainage Proforma v2019.02; Melin Sustainability and Energy Statement Rev. A dated 24 March 2002; Melin Designed SAP Calculation – Carbons Emissions Calculation Part L1A;
- 3) Prior to the commencement of development (excluding demolition) details of the type and treatment of the materials, including samples, to be used on the exterior of the building shall be submitted to and approved in writing by the Local Planning Authority. The approved materials shall be used in the construction of the development hereby approved, completed prior to its occupation/use and retained thereafter;
- 4) Prior to occupation of the development hereby approved, full details of refuse and recycling storage shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full prior to occupation of the development and retained thereafter;
- 5) Prior to the commencement of development, further details of the proposed solar PV array shall be submitted to the Local Planning Authority and approved in writing, including: (i) roof plans showing the amount of available roof space that is proposed to be used for the solar PV array; (ii) confirmation of the number of solar PV panels & the total area of the proposed array; the power output of each panel and generating capacity; (iii) revised calculations as necessary demonstrating the CO2 savings expected to be achieved. The installation of the solar PV array as agreed shall be carried out before the first occupation of the dwelling;
- 6) The development hereby approved shall be constructed in accordance with the approved Sustainability and Energy Statement, as amended, prepared by Melin Consultants Ltd and dated 24 March 2022. Prior to first occupation, as-built' Standard Assessment Procedure (SAP) outputs shall be submitted to the Local Planning Authority and approved in writing to demonstrate that the development has achieved the targeted reduction in CO2 emissions. All the approved measures shall thereafter be permanently retained;
- 7) The development hereby approved shall be constructed in accordance with the approved SuDS Report prepared by Nimbus Engineering Consultants Ltd dated March 2022. Prior to first occupation of the development, written confirmation that the approved site drainage and flood risk management measures, including SuDS, have been implemented as part of the

development as built shall be submitted to the Local Planning Authority and approved in writing. All the approved measures shall thereafter be maintained in accordance with the approved procedures for as long as the development is in existence;

- 8) Prior to commencement, 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 no more than 110 litres per person per day, as based on the Government's national calculation method for the purposes of Part G of the Building Regulations. The measures for limiting water consumptions shall be in place before first occupation of the dwelling;
- 9) 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;
- 10) Prior to the first occupation of the development hereby approved, full details of the position, design, materials and type of boundary treatments/means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full prior to occupation of the development and retained thereafter;
- 11) Prior to first occupation of the development hereby approved, full details of the secure cycle storage facilities shall be submitted to, and approved in writing by, the Local Planning Authority. The approved details shall show their positioning within the site, the size and materials of the enclosure and the means of access; 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;
- 12) If during implementation of this development, contamination is encountered which has not previously been identified, the additional contamination shall be fully assessed and a specific contaminated land assessment and associated remedial strategy submitted to and agreed in writing by the Local Planning Authority before the additional remediation works are carried out. The agreed strategy shall be implemented in full, prior to completion of the development hereby approved;
- 13) Prior to first occupation of the development hereby approved, details of proposals for any external lighting on the building and the site shall be submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be carried out as approved before first occupation and no other external lighting other than that agreed shall be installed;
- 14) The above-ground level works of development hereby approved shall not be commenced prior to the submission and approval of a Fire Safety Strategy pursuant to Policy D12(A) of the London Plan. The Strategy shall thereafter be implemented before first occupation of the dwelling.