



Appeal Decision

Site visit made on 4 April 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal Ref: APP/P5870/W/22/3304223

Station House, 33 North Street, Carshalton, Sutton SM5 2HW

- 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 an application for planning permission.
 - The appeal is made by Dream Homes Estate Agents Limited against the London Borough of Sutton.
 - The application Ref DM2021/02554, is dated 20 December 2021.
 - The development proposed is demolish existing building and construct a four storey building with commercial use at ground level and four residential units at upper floor levels.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

2. An application for costs was made by Dream Homes Estate Agents Limited against the Council. This application is the subject of a separate decision.

Main Issues

3. Although the appeal is against non-determination, the Council has given the reasons why planning permission would have been refused had the application still been within its remit to determine.
4. Based on the statement submitted by the Council, and my observations on site, the main issues are:
 - the effect of the proposal on highway safety with regard to the adequacy of off-street servicing provision and the potential for displacement of vehicles onto the public highway;
 - whether the future occupiers of the proposal would have acceptable living conditions;
 - the effect of the proposal on protected species; and
 - the effect of the proposal on the character and appearance of the area.

Reasons

Highway safety

5. The two commercial units within the ground floor of the proposal would attract vehicular movements required for the servicing of the units. The site fronts

onto North Street which I experienced to be a busy and well-trafficked route. On-street parking opportunities in the vicinity of the site are limited and often restricted. It seems unlikely that delivery and servicing drivers would utilise the pay and display parking located on Station Approach, as this would involve additional expense and a longer walk which may be impractical when transporting heavy goods.

6. I have not been provided with any substantive evidence to demonstrate that the appellant has access rights which would enable service vehicles to drop off and pick up without using or blocking parking spaces belonging to the Social Club. For this reason, I cannot be sufficiently confident that servicing can be undertaken without displacement onto the public highway which would result in an unacceptable impact to highway safety.
7. The appellant has suggested that a condition could be imposed to limit the times of deliveries and servicing of the commercial units. However, without a clear indication of the provisions that could be made to manage the overall delivery and servicing in a safe way I am not satisfied that this should be relied upon as a means to overcome the potential harm to highway safety.
8. Regardless of whether Network Rail have access rights across the appeal site and adjoining site, for the above reasons, I conclude that it has not been demonstrated that the proposal would not harm highway safety, with regard to the adequacy of the provision for deliveries and servicing. I therefore find that it conflicts with Policy 36 of the Sutton Local Plan (2018) (SLP) which requires the management and mitigation of the transport impacts of development.

Living conditions for future occupiers

9. From the evidence before me it appears that the internal floor to ceiling heights would fall short of that required by London Plan Policy D6 (2021) (LP). Whilst the shortfall is modest it would nevertheless result in sub-standard cramped accommodation for future occupiers. Although I note the appellant's suggestion that ceiling heights could be increased at building stage, I cannot be certain that the changes could be incorporated without further alterations to the proposal.
10. The proposal would therefore fail to provide acceptable living conditions for future occupiers, having particular regard to internal floor to ceiling heights. Accordingly, the proposal would conflict with LP Policy D6 and SLP Policy 9, which seek to ensure that new homes meet relevant standards. It would also conflict with Sutton's Urban Design Guide Supplementary Planning Document 14 "Creating Locally Distinctive Places" (2008) (SPD), in so far as it seeks to achieve good standards of accommodation and amenity, internally and externally.

Protected species

11. The appeal site lies close to a Green Corridor, and within 100 metres of two Sites of Importance for Nature Conservation. The building which would be demolished also has a number of slipped clay roof tiles which are identified as Potential Roost Features for bats. The Council refer to the presence of bats being known in the vicinity at Sutton Ecology Centre and The Grove and that bats are likely to utilise the railway lines for commuting and some foraging.

12. Bats¹ are protected by law and their presence is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. There is a statutory duty on me to have regard to the conservation of biodiversity².
13. The Office of the Deputy Prime Minister Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
14. The appellant has provided a Preliminary Bat Roost Assessment (the Report), which includes details of an initial desktop study, and site inspection which was undertaken during daylight to determine the potential for bats. The Report identifies walls, windows, windowsills and tiles, including a search for any crevices under tiles, missing mortar, gaps in the ridge or gable end of the roofs, crevices in render and brickwork, gaps tiles and any other potential bat roost opportunities. An internal inspection was also carried out.
15. The Report identified a number of priority habitats in close proximity to the site, as well as results of bat records within a 2 kilometre buffer. However, it did not identify evidence of bat activity at the appeal site, and each area of the building was identified as having a negligible potential for roosting bats. Access to the building's loft space was not possible. The report identifies that gaps in the roof tiles could provide access points to the roof space. However, it provides limited further justification to demonstrate why the potential for bats is considered to be negligible, in the absence of physical access to the loft space.
16. Furthermore, the report does not provide confirmation of the author's qualifications or whether they are a member of the Chartered Institute of Ecology and Environmental Management. Notwithstanding the various accreditations and notable clients that the company who prepared the report have, without knowledge of the qualifications of the report author, it is not possible to confidently ascertain that there are no bats utilising the structure.
17. I therefore consider that insufficient information has been provided to determine whether or not the proposal would be harmful to protected species. The proposal would therefore be contrary to Policy 26 of the SLP which seeks to conserve and enhance biodiversity.

Character and appearance

18. The parties agree that the principle of the demolition of the existing building is acceptable. There is considerable variation in the scale and appearance of buildings ranging from domestic scale two storey buildings, to larger blocks of flats with expansive footprints. Adjacent to the appeal site on the corner of North Street and Station Approach is a modern, three storey block of flats, with a flat roof. To the south of the appeal site, is a large block of flats known as Tyrell Court which is part three, part four storeys in height with a modern, flat roof design. Given the variety of built form within the area, the proposal's contemporary flat roof design would not appear at odds to the prevailing character.

¹ Conservation of Habitats and Species Regulations (2017) & Wildlife and Countryside Act (1981)

² Section 40 of the Natural Environment and Rural Communities Act 2000, as amended

19. At four storeys in height the proposal would be taller than the surrounding buildings, including the two storey Carshalton Social Club which is located to the rear of the appeal site. However, given that it would be seen as part of the wider North Street street scene where there is an irregular roofscape and mixture of building heights, I do not consider that the height or scale of the building would appear excessive or jarring.
20. Furthermore, the appeal site is within an identified Area of Taller Building Potential, within which SLP Policy 28 envisages and supports redevelopment and intensification. Whilst the Council suggest a taller building would be more appropriate on a larger site involving the adjacent Carshalton Social Club, the appellant asserts that this is under separate land ownership and I have no evidence that any redevelopment could come forward here other than on a site by site basis.
21. Whilst the site is located in a prominent corner location, given its fairly diminutive footprint, and triangular shaped design, the proposal would avoid large, blank side elevations and would not appear excessively large or overbearing. The submitted plans show articulation within the brickwork provided by a variety of windows and inset balconies. This would assist in breaking up the scale of brickwork and would be effective in ensuring the elevations do not appear as harmfully dominant and dull features. The proposed building materials include yellow facing brickwork on the upper floors and light brown or grey stonework at ground floor level. This approach would be appropriate given the use brickwork within nearby buildings in the immediate site context.
22. The appeal proposal by virtue of providing commercial uses at ground floor and residential above would conform to the mixed-use character of this part of North Street. The two commercial units would be constructed up to the North Street pavement edge in a similar manner to other commercial uses in the area, and as there would be no residential units at ground floor level, the lack of defensible space surrounding the building's footprint is not harmful. Equally, sufficient external space would be provided around the building for future residential occupiers. Whilst the quantum of ground level landscaping is limited, the proposal would also provide a large green roof area. Had the appeal proposal been acceptable, a planning condition could have been imposed to ensure that the green roof was appropriately planted prior to occupation of the proposal.
23. Consequently, the proposal would not have an unacceptable impact on the character and appearance of the area. Therefore, in this respect it would not be contrary to Policy 28 of the SLP, Policies D1, D4 and D9 of the LP and the SPD which, amongst other things, identify urban design principles including the need to respond to the surrounding context and enhance the character and appearance of the local area.

Other Matters

24. The concerns expressed regarding the Council's conduct during the processing of the pre-application enquiry and planning application fall outside of the remit of this Decision.
25. I see no reason to disagree with the Council's approach that the future occupiers of the development should not have access to car parking permits.

However, this is a matter that would need to be controlled by a legal agreement. The appellant has submitted a draft Unilateral Undertaking (UU). However, it is not signed and dated. Therefore, in the absence of such a completed agreement there is nothing to stop future occupiers of the proposal attempting to park on the surrounding roads.

26. Similarly, I note Historic England's Greater London Archaeological Advisory Service comments that the appellant is required to provide an archaeological assessment prior to the determination of the application. However, given the harm that I have identified above and that I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter or the lack of the completed UU further as these would not alter my findings on the main issues.
27. In considering the potential benefits of the proposal, I note the Council's housing targets for the delivery of homes during the plan period and in particular the role that windfall sites, as well as intensification and small sites in particular can play. I also note that the appeal site is in an accessible location and would represent a more efficient use of the land. Furthermore, the scheme would be located on previously developed land which the National Planning Policy Framework (2021) (Framework) seeks to encourage. The design of the building could incorporate technologies to prevent future occupiers from being affected by noise from neighbouring uses, in accordance with the Framework.
28. I acknowledge that residential development in this location is acceptable in principle and the proposal may be compliant with various other provisions of the development plan. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.
29. In terms of the economy, the new development would create employment, and support growth during the construction period albeit for a limited time. It is a reasonable assumption, given the accessible nature of the appeal site that the increase in population, and resulting boost in the spending power of the local economy, would also help support services in the surrounding area.
30. A number of interested parties have raised other concerns in relation to the development, such as in relation to its effect on the operations of the Carshalton Social Club, in terms of the effect on access, loss of light and impact on licencing arrangements. Concerns have also been raised about the impact on neighbouring properties, including the loss of privacy and loss of light as a result of the proposal. However, given my conclusions on the main issues and that the appeal is dismissed, there is no need for me to address these in further detail.

Conclusion

31. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed and planning permission refused.

B Pattison

INSPECTOR