



Appeal Decision

Hearing held on 15 August 2023

Site visit made on 15 August 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7TH SEPTEMBER 2023

Appeal Ref: APP/P5870/C/21/3289021

Land at The Old Forge Site, High Street, Carshalton SM5 3AX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Dr. Adam Islam, ASI Asset Management Limited against an enforcement notice issued by The Council of the London Borough of Sutton.
- The notice was issued on 15 November 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of a building on the Land.
- The requirements of the notice are: (i) Demolish the Building in its entirety, restoring the land to the state it was prior to the breach of planning control. (ii) Remove from the Land all resultant materials and debris arising from compliance with step 5(i) above.
- The period for compliance with the requirements is nine calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

1. An application for a partial award of costs was made by the appellant against The Council of the London Borough of Sutton. That application is the subject of a separate Decision.

Background and Preliminary Matters

2. The Council granted planning permission¹ on 23 April 2018 for development at the appeal site described in the First Schedule of its decision notice as: 'In accordance with your application... Demolition of derelict building and erection of a 3 storey building with dentists surgery (D1) on the ground floor and one x 1 bedroom flat, one x 2 bedroom flat and one x 3 bedroom flat on floors 1 and 2 with cycle and refuse storage' (the Planning Permission). The 'derelict building' referred to in the description of development was demolished prior to the Planning Permission being issued.
3. The Planning Permission is subject to 16 conditions set out in the Second Schedule of the Council's decision notice. Condition 1 requires that development to be carried out in accordance with proposed elevation and floor plans, amongst other details (the Approved Details). Condition 15 requires that development to begin within 3 years of the date of the Planning Permission. An

¹ The Council's ref: C2017/78530

application² to discharge all 'pre-commencement' conditions attached to the Planning Permission was approved in part by the Council on 10 April 2019. Conditions 8 and 13 were not discharged fully, as further details were required to be approved following the commencement/completion of development.

4. No conditions were attached to the Planning Permission to control the use of the ground floor of the development. A dentist's surgery fell under the Class D1 use class at the time the Planning Permission was issued, as defined by The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). Subsequent amendments to the UCO, which came into force before the commencement of the first use of the development, put a dentist's surgery in a new Class E use class. Class E relates to a wide range of commercial, business and service uses, including retail shops. A dentist's surgery and a shop selling building and decorating goods therefore both fall within the same use class.
5. In the interests of clarity, I shall refer to the building which has been constructed as 'the Existing Development' and the building shown in the Approved Details as 'the Approved Development'. The appellant has put forward details of an alternative scheme as part of the appeal under ground (a), which I shall refer to as 'the Proposed Amended Development'.
6. The Hearing was closed in writing on 24 August 2023, following receipt of outstanding documents from the main parties.

Ground (c)

7. To succeed under this ground of appeal the appellant would need to demonstrate that the alleged breach of planning control stated in the enforcement notice does not constitute a breach of planning control. It is claimed that the Planning Permission has been implemented.
8. I have been referred to various differences and similarities between the Existing Development and the Approved Development. These are all clearly appreciable from everything I have read and seen. The differences are significant and result in the Existing Development bearing less than a passing resemblance to the Approved Development. This is mainly on account of the different overall main roof design, shopfront design, window designs, window materials, the omission of reconstituted stone window cills and heads, and the inclusion of grey brick string courses between first and second floor levels.
9. Notwithstanding the above, there are also some broad similarities between the Existing Development and the Approved Development. A 3-storey building with a commercial use on the ground floor, a 1-bedroom flat and a 2-bedroom flat on the first floor, and a 3-bedroom flat on the second floor has been constructed. The Existing Development therefore reflects the type of development described in the First Schedule of the Council's decision notice relating to the Planning Permission. Although its main roof ridge is lower than that of the Approved Development, the whole development is of similar scale, bulk, massing, and form as the Approved Development. The external brick and tile finishes and guttering materials accord with what has been approved by the Council when it discharged condition 15.
10. Ms Smith for the Council described the footprint of the Existing Development as "near enough the same as what has been approved". Mr Merchant, a structural

² The Council's ref: CLC2018/00224

engineer acting on behalf of the appellant, stated that the foundations constructed³ are exactly the same as what would have been required for the Approved Development. The Council did not dispute this.

11. Mr Merchant explained that much of the Existing Development would need to be demolished to carry out works to ensure the Approved Development is completed fully in accordance with the Approved Details. However, it was also explained that parts of the side and rear walls and the rear projection would be capable of being retained, along with the foundations. The Council described those works as tantamount to the substantial demolition of the Existing Development. The works described by Mr Merchant would comprise the demolition of substantial parts of the Existing Development, but they would also leave significant elements consistent with the Approved Development.
12. For the purposes of condition 15⁴ of the Planning Permission, Section 56 of the Act confirms that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. It also clarifies that in this context, 'material operation' means the digging of a trench which is to contain the foundations, or part of the foundations, of a building.
13. Caselaw⁵ has found that it is insufficient to simply consider material differences between what has been built and what has been approved when assessing whether a planning permission has been implemented. Similarities and the degree of compliance with the approved plans are also relevant, together with the extent to which the works are substantially usable in implementing a planning permission. It is necessary to consider whether any material operations comprised in the development authorised by the Planning Permission relate to the development carried out.
14. In this case, the evidence indicates that the foundations and parts of the external rear and side walls and rear projection would be useable in completing the Approved Development. Those are substantial works which are consistent with the Planning Permission when they were carried out. Despite the clear overall differences between the Existing Development and the Approved Development, it is evident that when the foundations were dug, that constituted a material operation comprised in the development authorised by the Planning Permission. Although development deviated from the Approved Details at some point after the laying of those foundations and parts of the rear and side walls, the development authorised by the Planning Permission had begun within the relevant timeframe specified by condition 15.
15. The Approved Details are essential to interpret the development authorised by the Planning Permission, as referred to at the beginning of the First Schedule of the decision notice and by condition 1. Although development commenced in accordance with condition 15 of the Planning Permission, there was a point after the commencement of that development where a building significantly different to that which has been authorised was completed at the appeal site without planning permission. That building is in breach of planning control and is correctly described as such in the enforcement notice.

³ As shown on drawing number 201908/S01, Revision E, dated April 2019 (Appendix 4 to the appellant's Hearing Statement)

⁴ The general condition limiting the duration of the Planning Permission referred to by section 91 of the Act

⁵ Commercial Land Ltd v SSTLR & Kensington and Chelsea RBC [2002] EWHC 1264 (Admin); [2003] JPL 358; and Imperial Resources SA v FSS & Kensington and Chelsea RBC [2003] JPL 1346.

16. The appellant accepts the Existing Development comprises the carrying out of development without the required planning permission and that development has not been completed in accordance with the Approved Details. Section 171A(1) of the Act confirms this constitutes a breach of planning control.
17. The appeal under ground (c) must therefore fail.

Ground (a) and the deemed application for planning permission

18. Section 177(1)(a) of the Act provides that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. Caselaw⁶ directs that, so long as there is an appeal under ground (a), I must consider whether the Proposed Amended Development would be part of the matters stated in the enforcement notice as constituting a breach of planning control and whether it should be permitted. Whether or not the Proposed Amended Development amounts to part of the matters, and may be permitted, is for the planning judgement of the decision maker⁷.
19. The Proposed Amended Development would involve significant changes to the external appearance of the Existing Development. Specifically, proposed works would include: timber sash windows to replace uPVC casement windows; the installation of reconstituted stone mix window cills and heads; timber bargeboards and weatherboarding to the dormer windows to replace uPVC versions; the raising of the central front elevation soffit and fascia; the installation of timber finials to the front gables; black painted aluminium guttering and downpipes to replace uPVC versions; low-profile grey aluminium framed rooflights to the rear roof to replace domed uPVC versions; the single storey rear projection would be extended further back to adjoin a breeze block rear boundary wall which would be re-faced with matching brickwork; brick coloured aluminium boiler flues and fan extract cover to replace uPVC versions; aluminium and timber doors to replace uPVC doors at ground level; and timber shopfront pilasters and fascia signage to replace 'stone-coat' versions.
20. These would comprise minor works to the Existing Development. The Proposed Amended Development would remain part of, and within the scope of, the matters stated in the enforcement notice. I therefore find that planning permission could be granted for the Proposed Amended Development under the provisions of section 177 of the Act, if the appeal under ground (a) succeeds.

Main Issue

21. Taking the above into account, the main issue relevant to the ground (a) appeal and the deemed application for planning permission is:
- The effect of the Existing Development and the Proposed Amended Development on the character and appearance of the area, with particular regard to the Carshalton Village Conservation Area (CA) and any other heritage assets.
22. As I have found that the Approved Development has been commenced in accordance with condition 15 of the Planning Permission, this is a valid fallback position against which I shall consider the Existing Development and the

⁶ Ahmed v SSCLG & Hackney LBC [2014] EWCA Civ 566

⁷ R (oao Banghard) v Bedford BC [2017] EWHC 2391 (Admin)

Proposed Amended Development. It would be wrong to only compare them to the Approved Development, as the appellant is not obliged to complete that scheme. It is appropriate to compare the impact of the Existing Development and the Proposed Amended Development, as standalone schemes, to a vacant appeal site. This is because that is what the enforcement notice would otherwise achieve.

Reasons

23. The appeal site is a roughly square shaped plot bordered by car parking areas to the front and one side. It is set back from Carshalton High Street, behind a car park interspersed with tall planting. The whole of the appeal site and its near surroundings are within the CA.
24. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a general duty on me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The vacant appeal site, before the Existing Development was carried out, made a neutral contribution to the character and appearance of the CA. This is implied in the Council's CA Character Appraisal and Management Plan (2019) (the CAMP). The main parties agree that the Approved Development would have enhanced the character and appearance of the CA.
25. The CA covers a large area and is split into 7 sub-areas, A to G, by the CAMP. This explains that the CA predominantly encompasses high quality and well-maintained open parkland of historic significance, and that its overriding feature is eclecticism. The CAMP goes on to describe the character of the CA as relying on the organic form of development, with significant emphasis given to the amount and location of parks and ponds, the irregular street layout and building lines and views, and the consideration and preservation of the human scale of development in the area.
26. Carshalton retail centre and High Street form sub-area D, and are located at the heart of the CA. The CAMP describes this part of the CA as consisting of a mixed quality historical environment with fine buildings and others that negatively impact on the character of the CA, such as Beacon Grove. It refers to the eastern end of High Street as having experienced a great deal of rebuilding in the mid-20th century, and the northern side of High Street as never being a typical shop-fronted high street.
27. The character and appearance of the appeal site's immediate surroundings are heavily informed by the mix of 20th century buildings lining both sides of the nearest part of High Street. These vary in quality of design. For example, the building directly opposite the appeal site⁸ comprises a bland flat roofed 3-storey block, and the building immediately to the east⁹ is an odd single storey building with an uncharacteristic tall front elevation. A modest terrace of single storey 20th century almshouses with pitched roofs abuts the appeal site to the north, which are identified as an unlisted building of merit within the CAMP. A number of listed buildings and other buildings identified as locally listed buildings and unlisted buildings of merit are also located close to the appeal site, within the CA.

⁸ 36 to 46 High Street

⁹ 27 to 29 High Street

28. The character and appearance of the CA is therefore defined by buildings of different styles and ages, which are mainly 2 or 3-storeys in height. Buildings identified as heritage assets by the CAMP make an important contribution to the historic character of the CA, but the uninspiring modern buildings at 36 to 46 High Street, 27 to 29 High Street, and Beacon Grove also influence the context in which the appeal site is experienced within the CA. The CAMP refers to this part of the CA being characterised by excessive traffic dominance, which I saw to be true due to the presence of the car park abutting the appeal site.
29. In written submissions the Council has described the appeal site as being within the close setting of Grade II listed buildings at 1, 5 to 7, and 16 to 20 High Street, locally listed buildings at The Grove and The Nest, and unlisted buildings of merit at 1 to 4 The Green and 48 to 84 High Street. The Council did not consider that the Approved Scheme had any impact on the significance or settings of these buildings¹⁰. During the Hearing it was clarified that the Council does not consider the Existing Development has a harmful impact on the significance or settings of those buildings, other than the almshouses at 1 to 4 The Green. This is on account of the Existing Development's low quality and proximity, which the Council claim would not be addressed by the Proposed Amended Development.
30. The Existing Development's 3-storey element is set away from the boundary shared with the almshouses behind its single storey element. The single storey element is almost the same depth as that which would form part of the Approved Development. Although there is more bulk to the roof of the 3-storey element of the Existing Development compared to that of the Approved Development, the relationship between the Existing Development and the almshouses is very similar to that which would exist if the Approved Development was completed. This is with the exception of a retained breeze block rear boundary wall, which I shall return to below.
31. Views of the Existing Building from High Street are partially restricted by planting within the car park, but its size and architectural design can be appreciated in views from the east, where it is seen and experienced close to and alongside 27 to 29 High Street and Beacon Grove. It is not seen in views along High Street from the west due to the positioning of the 3-storey terrace at 9 to 19 High Street. It is not seen in the prominent views within the CA identified in Map 14 of the CAMP, and it is only seen in very restricted views from some of the landmarks also identified in that map. It can be partially seen behind trees alongside Beacon Grove in views from Carshalton Place, outside the prominent view looking down Carshalton Place identified in the CAMP. The Existing Development is not therefore a prominent building in the CA.
32. As a 3-storey building with a dual-pitched roof and faux cross wings to the front, the scale, bulk, massing, and form of the Existing Development is consistent with 20th century development along this part of High Street. The front facing gables of the Existing Development are wider and have lower roof pitches than those in the Approved Development, but this does not lead to them appearing uncharacteristically squashed or squat, amongst other building forms in the CA. The Existing Development lacks the pleasant vertical emphasis given to the Approved Development by the design of its main roof and front

¹⁰ Officer Report for application C2017/78530/FUL, Appendix 2 of the appellant's Hearing Statement

facing gables, but this does not result in harm to the character or appearance of the CA compared to the neutral impact of a vacant appeal site.

33. In short-range views along High Street and from within the car park, the scale, bulk, massing, and form of the Existing Development are consistent with those of the broad range of nearby buildings within the CA. Views of the Existing Development from further afield are restricted, with only passing glimpses available from North Street and The Grove. This is due to intervening tree cover and the distances involved. In all of those longer distance views, the scale, bulk, massing, form and design of the Existing Development are very similar to what would be seen if the Approved Development was completed.
34. The scale, bulk, massing, and form of the Existing Development do not therefore cause harm to the significance of the CA and preserve its character and appearance. It is the design features of the Existing Development in short-distance views from High Street and the car park which fail to preserve or enhance the character or appearance of the CA and harm its significance. The Existing Development's brick and tile finishes are not particularly high quality, but these and the plastic guttering and downpipes, match those approved by the Council in respect of the Approved Development.
35. The uPVC casement windows with large top hung panes on front and side elevations and the 'stone coated' pilasters of the shopfront are notably unpleasant features of the Existing Development. The use of uPVC bargeboards and weatherboarding to the front facing dormers add to the overall poor-quality appearance of design features across the exterior of the building. Smaller domestic features added to the building, such as white uPVC boiler flues and fan extracts have an untidy appearance.
36. The aluminium framed shopfront of the Existing Development incorporates a stallriser, pilasters with corbels, and fascias. Inappropriately large fascia signage has been installed which covers one of the corbels. All of the pilasters are poorly detailed and finished in a 'stone-coating' which has an unattractive appearance. The size of the corbels is inconsistent with the fascia.
37. In addition to the above, there are examples of poor workmanship, including expansion joints with white foam finishes, ill-fitting downpipes, a raised French drain, and inconsistent mortar finishes. Such features were not addressed by the Approved Details or conditions relating to the Approved Development. A pre-existing unsightly breeze block wall along the rear boundary has also been retained, rather than demolished or encased within the building. A difference in levels between the internal ground floor of the commercial unit and the highway has resulted in a stepped external finish between the bottom of the shopfront and the highway. This includes the raised French drain across part of the shopfront, which has a poor, makeshift appearance.
38. I was referred to mismatching brickwork on the west elevation of the Existing Development, but there is very little difference between what appear to be different batches of the same brick type, above initial courses of engineering bricks. That can be a common occurrence in building projects which becomes less noticeable over time following weathering. It is the inconsistency of mortar tones on the west elevation which is typical of the poor finishing to the Existing Development. All of the examples of poor detailing/finishing referred to above could be addressed through minor works required by conditions attached to a grant of planning permission.

39. The Proposed Amended Development would address the above issues, as set out in the list¹¹ at Appendix 11 of the appellant's Hearing Statement to be read alongside the proposed plans at Appendix 4 of the appellant's Final Comments. This would go a long way towards improving the overall design and appearance of the building. Further proposed enhancements¹² are also set out at the appellant's Appendix 11, including the 'improvement of front pavement edge', black painted aluminium replacement guttering and downpipes, and high-density timber replacement pilasters and fascias to the shopfront. The proposed shopfront would retain its aluminium framing, glazing, doors, and stallriser, which are appropriate for this part of the CA in a recessed section of High Street which is not characterised by typical shop-fronted buildings. Taken together, all of the proposed changes and enhancements would ensure the Proposed Amended Development would integrate well with the surrounding area.
40. The grey brick string courses on the front and side elevations of the Existing Development add some interest to the front and side elevations, separating the first and second floors. They are minor details which are of little consequence to the overall appearance of the Existing Development. The same can be said for the railings on the east elevation, which are taller than those previously permitted. These features do not detract from the character or appearance of the CA where a range of brick finishes and detailing can be seen. They would be retained as part of the Proposed Amended Development.
41. Black wires have been fitted to the exterior of the Existing Development on its west elevation. The appellant explained that these have been installed by a third party. They have the appearance of telecommunication wiring which is often installed to the exterior of buildings. It may be possible to provide those wires in a tidier arrangement, but they have a negligible impact on the external appearance of the building in this high street location adjacent to a car park. They do not cause any material harm to the significance of the CA or the character or appearance of the CA.
42. The downpipes at the front of the appeal site terminate at ground level, leaving rainwater collected by the front and side elevation gutters to discharge onto the public highway. I have not been referred to any concerns in this regard other than their impact on the character and appearance of the area. No front elevation downpipes are referred to in the Approved Details or the Flood Risk Assessment and Surface Water Drainage Strategy¹³ relating to the Approved Development. Downpipes are necessary to manage rainwater runoff from the front roof slopes, and these existing plastic rainwater goods are proposed to be replaced by black painted aluminium versions. This would improve the appearance of these parts of the Existing Development.
43. All of the proposed changes and enhancements listed in Table 1 and Table 2 of the appellant's Appendix 11 would be necessary to ensure the Proposed Amended Development would preserve the character and appearance of the CA. They would not alter the scale, bulk, massing, or overall form of the Existing Development, but as I have already explained, those elements of the Existing Development are consistent with and preserve the character and appearance of the CA.

¹¹ The proposed changes numbered 1 to 6, 9 to 11, 13, 15, 18 to 21, 23, 24, 29 and 30 in Table 1

¹² Table 2

¹³ By STM Environmental Consultants Limited, dated 4 March 2019

44. The Council described the Proposed Amended Development's design as an amalgamation or hybrid of different designs, which does not go far enough to preserve the character or appearance of the CA. For the reasons set out above, I disagree. It is clear that the Approved Development would have been a superior form of development at the appeal site which would have enhanced the character and appearance of the CA, but that is not the benchmark to assess the Proposed Amended Development against. The Proposed Amended Development would not enhance the character or appearance of the CA, but that does not mean it would harm the CA.
45. I find that the Existing Development causes less than substantial harm to the significance of the CA and fails to preserve or enhance the character or appearance of the CA on account of its poor-quality design features, including the finishes described above. Subject to conditions requiring all of the proposed changes and enhancements specified in Table 1 and Table 2 of the appellant's Appendix 11 and shown in the proposed plans in Appendix 4 of the appellant's Final Comments, the Proposed Amended Development would address that harm and preserve the character and appearance of the CA. The Proposed Amended Development would have a neutral impact on the significance of the CA, compared to a vacant appeal site. The Existing Development does not harm the setting of any other heritage assets, and neither would the Proposed Amended Development.
46. The public benefits associated with the Existing Development, which include the provision of a mix of housing and commercial employment space on a previously unused site are modest for this high street location. I assign them modest weight in favour of the Existing Development which does not outweigh the moderate harm that development causes to the significance of the CA.
47. The Proposed Amended Scheme would accord with Policies 28 and 30 of the Sutton Local Plan 2016 – 2031 (2018) (the LP), Policies D4 and HC1 of The London Plan (2021), and the guidance set out in the CAMP and the Council's Supplementary Planning Document: Creating Locally Distinctive Places (2008). These require, amongst other things, development to be of a suitable scale and massing which respects the local context and responds to local character, conserving the significance of heritage assets.
48. Policy 28 also states that planning permission will be granted for development which is attractive and designed to the highest standard, especially with regard to architectural detailing. In general terms, the Proposed Amended Development would not represent the highest standard of design. However, the development plan needs to be read as a whole and with the context of the appeal site in mind. The CA and immediate surroundings of the appeal site include a broad range of building styles and the overall design of the Proposed Amended Development would be of a suitably high standard for the appeal site. The Proposed Amended Development would be well-designed with regard to chapter 12 of the National Planning Policy Framework.

Other Matters

49. Interested parties have referred to the demolition of the pre-existing buildings at the appeal site, but that does not form part of the matters stated in the enforcement notice. The Planning Permission did not require the fabric of any of those buildings to be retained or re-used.

50. I have been referred to alleged highway safety issues relating to the entrance to the commercial unit, which opens onto vehicular access to car parks. A similar arrangement in the Approved Development has been authorised by the Council. It was confirmed by the Council that it did not have any highway safety concerns with the Existing Development. Although the access arrangements for the commercial unit are not ideal, they are in essence the same as those which form part of the Approved Development. Furthermore, due to the arrangement of the car park access and the High Street footpath, pedestrians and motorists using this area will be aware of the potential for conflict and the need to pay attention to their surroundings. I do not therefore consider the Proposed Amended Development would have an unacceptable adverse impact on highway safety.

Conditions

51. A list of agreed suggested conditions has been provided by the main parties, which broadly follows the conditions and details previously approved by the Council in respect of the Approved Development.
52. As the deemed planning application is made in respect of the development as alleged in the enforcement notice and built, there is no mechanism for me to incorporate the proposed plans and details of amendments presented in the appellant's appendices. It is not therefore possible for me to impose a condition specifying any approved plans.
53. I can grant planning permission for the Existing Development subject to a condition which requires the submission of a scheme of works for the Council's approval, and for the approved scheme of works to then be completed within a reasonable timeframe. This would be the only enforceable way of ensuring the Proposed Amended Development would be carried out as an alternative to demolishing the building. As I have clarified above, to ensure the development preserves the character and appearance of the CA, that scheme of works would need to match the proposed changes and enhancements set out in Appendix 11 of the appellant's Hearing Statement and Appendix 4 of the appellant's Final Comments.
54. Condition 1 is therefore imposed to ensure that a scheme of works to reflect the above appendices and all other necessary details is submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the Proposed Amended Development before development takes place.
55. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable. The condition will also control the hours of those works to protect the living conditions of nearby residents.
56. Many of the necessary details have already been provided, but I consider a period of 6 months would be reasonable in this instance to allow the appellant the opportunity to prepare and submit specific details and samples of the

necessary amendments in a full schedule of works. The condition will require the approval of a timetable for their completion. There would be serious implications if those timescales are not complied with, as the building would need to be demolished within 12 months for the condition to be enforceable. This is reasonable considering the ground (g) representations.

57. An outside area to the rear of the appeal site was intended to act as an amenity space for residents of the flats. I saw during my site visit that this area has been enclosed by a plastic roof and it is apparently being used by the ground floor commercial unit for the storage of waste and goods. It would therefore be reasonable and necessary in the interests of providing appropriate amenity space for condition 1 to require details of hard and soft landscaping to that area, which should only be used as an amenity space associated with the flats.
58. I have found that parts of the west elevation of the building need to be repointed to provide a consistent mortar finish across the elevation. This would ensure an appropriate finish to the building to preserve the character and appearance of the CA. Condition 1 will therefore also require details of the necessary repointing to be approved, and the completion of those works.
59. A scheme of noise insulation/reduction measures would need to be approved by the Council to ensure appropriate noise levels can be achieved within the flats. Previously approved measures have already been carried out, but it is unclear whether the proposed window alterations would have implications for noise levels within the flats, which may require further noise insulation/reduction measures. The Council and the appellant have agreed on suggested wording for a condition relating to such measures, which I shall include in condition 1. This would protect the living conditions of residents of the flats, due to the proximity of High Street, car parking spaces and commercial premises.
60. I noted that the cycle parking storage facilities previously approved by the Council had not been provided/retained within the appeal building. A condition would be reasonable and necessary to ensure they are provided and retained in the interests of encouraging sustainable modes of transport. Three months would be a reasonable period for them to be provided.
61. An energy statement and an environmental flood risk assessment and surface water drainage strategy have previously been approved by the Council in respect of the Approved Development. The Council claimed that these would also be relevant to the Proposed Amended Development. The appellant has advised that the Existing Development has been constructed in accordance with these details, which has not been disputed by the Council. A condition requiring the measures set out in those documents to be retained would therefore be reasonable and necessary to ensure the development would accord with environmental standards set out in Policies 31 and 32 of the LP.
62. It would be reasonable and necessary to control the hours of operation of the commercial unit at ground floor level, in line with condition 11 of the Planning Permission to protect the living conditions of nearby residents. As the description of development in the enforcement notice does not specify the use of the commercial unit, it would also be reasonable and necessary for the condition to specify the relevant use class authorised in that part of the

development. This would provide clarity and protect the living conditions of nearby residents.

63. Signage displayed at the appeal site is controlled by The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended). The fascia signage forming part of the Existing Development provides an example of how the detailed design of the proposed shopfront could be disregarded by future occupiers of the commercial unit. The Council has the power to take action against any unlawful advertisements and any lawful advertisements which cause substantial injury to the amenity of the locality. It would not therefore be reasonable or necessary to attach a condition which controls the display of advertisements at the appeal site.

Conclusion

64. There are no material considerations that indicate the ground (a) appeal and the deemed planning application should be determined other than in accordance with the development plan. For the reasons given above, I conclude that the appeal succeeds on ground (a) in respect of the Proposed Amended Development. I shall grant planning permission for the building as described in the notice subject to conditions requiring the proposed changes and enhancements necessary to complete the Proposed Amended Development. The appeal on ground (g) does not fall to be considered.

Formal Decision

65. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a building at The Old Forge Site, High Street, Carshalton SM5 3AX as shown on the plan attached to the notice and subject to the conditions set out in Schedule A at the end of this Decision.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Horatio Waller	Barrister, Francis Taylor Building
Sam Jackson	Heritage Consultant, Built Heritage Consultancy
Laura Dimond	Planning Consultant, Maddox Planning
Imran Merchant	Structural Engineer, Merchant & Associates Ltd
Adam Islam	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Simon Chalcraft	Planning Enforcement Manager
Wendy Smith	Planning Enforcement Officer
Mark Sanderson	Heritage Consultant, WS Heritage
Katy Johnson	Area Planning Officer

DOCUMENTS SUBMITTED AT THE HEARING

- Policies 1, 7, 17 and 18 of the LP
- Policies H1 and H2 of the London Plan (2021)
- The Council's Supplementary Planning Document: Creating Locally Distinctive Places (2008)
- List of agreed suggested conditions
- Water efficiency calculations by Eecobuild Ltd, dated 18 April 2021
- Surface Water Drainage Verification Report by STM Environmental Consultants Ltd, dated 14 June 2021
- Proposed bicycle store plans 157/LS/500 and 157/CS/401
- Energy Statement by Energy Performance & Sustainability Group Ltd, dated 7 September 2017
- Flood Risk Assessment and Surface Water Drainage Strategy by STM Environmental Consultants Ltd, dated 4 March 2019

Schedule A – Conditions

- 1) The development hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 12 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 6 months of the date of this decision a scheme of works to include full details of:
 - (a) all proposed changes and enhancements set out in Table 1 and Table 2 at Appendix 11 of the appellant's Hearing Statement and the proposed plans at Appendix 4 of the appellant's Final Comments;
 - (b) proposed hard and soft landscaping of the external amenity space;
 - (c) proposed repointing of the west elevation;
 - (d) proposed noise insulation/reduction measures; and
 - (e) the hours between which all works will be undertakenshall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The scheme of works shall include detailed profile and section drawings and samples of shopfront pilasters and fascias, window cills and heads, and bargeboards. It shall also include details of how noise levels of 35 dBLAeq,16 hour in living rooms and bedrooms during the daytime (0700 to 2300) and 30 dBLAeq,8 hour and 45 dBLAmax during the night time (measured with F time-weighting and between 2300 and 0700) in bedrooms in accordance with BS8233:2014 shall not be exceeded.
 - ii) If within 9 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
 - v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be adhered to and the hard and soft landscaping of the external amenity space shall be maintained and that area shall only be used in association with the residential flats at the site and not for any commercial purposes.
 - vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 2) Bicycle parking facilities shall be installed in accordance with the details shown in plans 157/LS/500 and 157/CS/401 within 3 months of the date of this Decision. The bicycle parking facilities shall thereafter be retained and kept available for use by residents of the flats within the building.

- 3) The measures set out in the Energy Statement by Energy Performance & Sustainability Group Ltd (dated 7 September 2017) and the Flood Risk Assessment and Surface Water Drainage Strategy by STM Environmental Consultants Ltd (dated 4 March 2019) shall be retained.
- 4) The commercial unit at ground floor level shall only be used for purposes falling within Schedule 2, Part A, Class E of The Town and Country Planning (Use Classes) Order 1987 (as amended), and that use shall only operate between the hours 0700 to 1830 Monday to Saturday and 1000 to 1600 on Sundays and Bank Holidays.