



Appeal Decision

Site visit made on 5 October 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 23 July 2024

Appeal Ref: APP/P5870/W/23/3316146

Land rear of 14 High Street, Carshalton SM5 3AP

- 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 F Willis against the decision of the Council of the London Borough of Sutton.
- The application Ref DM2022/01178.
- The development proposed is described as the erection of three two-bedroom houses with appropriate facilities.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The main parties have been invited to submit comments in relation to a related judgment¹. Accordingly, no party has been prejudiced by the inclusion of this judgment in the determination of this appeal. The comments from the parties have been considered in my assessment of the appeal.
3. The site lies within the Carshalton Village Conservation Area and as such there is a duty imposed by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requiring decision makers to have special regards to the desirability of preserving or enhancing the character or appearance of a Conservation Area (the CA).

Main Issues

4. The main issues are:
 - whether the proposed development would preserve or enhance the character or appearance of the CA, with particular reference to the design of the dwellings and the effect on an adjacent Ash tree;
 - whether the proposed development would provide adequate living conditions for future residents, with particular reference to internal living space; and
 - whether a planning obligation is necessary to make the development acceptable, with particular reference to the provision of car parking.

¹ Westminster City Council v SSCLG & Mrs Marilyn Acons [2013] EWHC 690 (Admin)

Reasons

Character and appearance of the Conservation Area

5. The appeal site is a single storey warehouse situated to the rear of 14 High Street. It is located within an outlying area of Sub Area D of the CA, which is focused around Carshalton High Street. This sub area is characterised by Victorian and earlier buildings in high density terracing. That said, the appeal site is tucked away from the High Street and instead fronts The Square, an area characterised by parking and larger residential dwellings. Photographic evidence and a corresponding watercolour show the site as a simple warehouse building aside a terrace of cottages. These sources also appear to show the site was separated from the High Street by a formal gate. This suggests a closer association of the site not with the High Street, but what was formally parkland to the south.
6. Accordingly, despite the location of the appeal site within Sub Area D, it actually shares a more intimate spatial relationship with the adjacent Sub Area C. This area instead contains detached and semidetached housing in a more suburban layout with softly landscaped, private garden spaces. This emphasises Area C's overall character as a more permeable and open arrangement of built form. Given such, I find that the significance of the CA, insofar as it relates to this appeal, to be primarily associated with the harmonious and spacious arrangement of spaces and buildings and incorporation of soft landscaping.
7. The appeal site is formed of a utilitarian block of predominately brick materials, some of which appears to be historic in origin. Nonetheless it maintains a fairly innocuous, low profile in the street scene. It therefore makes a neutral contribution to the significance of the CA.
8. The proposal would introduce a significantly increased density of development, with the construction of three residential dwellings within a small area. The proposed massing is substantially greater than the prevailing scale of buildings around The Square. Additionally, the mansard roof design and lack of parking access would result in the appearance of a high-density urban development, disrupting the gentler historic character along The Square. Accordingly, although the development would match the height of the adjacent building, it would be visually obtrusive and jarring within the CA. The small size of the frontages and rear gardens also provide limited opportunities for soft landscaping, which is a defining feature of the area.
9. Given such, the proposal would fail to preserve or enhance the character and appearance the CA. The level of harm would be less than substantial. Paragraph 205 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Harm should have a clear and convincing justification.
10. Under such circumstances, Paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal. I acknowledge that the development would deliver three dwellings in a location which is close to an existing residential area. This would have a positive impact

on the local housing supply and there would also be some economic benefits through the associated uplift from the construction process and future spending by residents. Furthermore, it would replace a building which does not contribute positively to the CA. These considerations attract a moderate level of importance as public benefits. However, they would not outweigh the harm identified above to the heritage asset.

11. There is a semi-mature Ash tree located south of the appeal site, near the car park. While the tree adds some value to the area, it is not particularly significant. I observed it to be of moderate size especially when compared to the larger specimens along The Square. The significance of a CA is determined by the overall experience and this tree does not enhance the character of any historic buildings in the vicinity. Although it does make a minor contribution to the area's amenity, its loss would not harm the overall character of the CA. Therefore, while conditions could be used to protect the tree, its loss would not harm the significance of the CA.
12. Drawing my findings together, I conclude that the proposal would fail to preserve or enhance the character or appearance of the CA. This would fail to satisfy the requirements of the Act and the Framework. It would conflict with Policy 28 of the Sutton Local Plan 2018, specifically the need for development to respect and respond to heritage assets. It would similarly conflict with Policy 30 of the Sutton Local Plan 2018 and with Sutton's Urban Design Guide Supplementary Planning Document 14 (SPD).

Living Conditions – future occupiers

13. The plans indicate that each dwelling would have two bedrooms: one with a single bed and one with a double bed. Given the limited size of the rooms, each dwelling is likely suitable for a maximum of three occupants. Policy D6 of The London Plan 2021 sets out the minimum internal space requirements for dwellings, requiring that two bedroom, two storey dwellings with bed spaces for three persons, have a minimum size of 70 m² with an additional 2 m² of built-in storage. The proposed dwellings have a gross internal floor area of 70.95 m², just meeting the minimum standard.
14. However, each dwelling only provides 1.2 m² of storage instead of the required 2 m². Furthermore, the dimensions of the bedrooms are constrained by the mansard roof design, limiting ceiling height and reducing habitable space for future occupants. Consequently, the dwellings fall short of the minimum acceptable provisions in terms of storage space and useful habitable space. Additionally, the plans do not specify the size of the kitchen, living room, or bathrooms, leaving it unclear whether they comply with Sutton Council's Internal Housing Space Standards as set out in the SPD. Given the failure of each unit to fully meet the minimum space requirements, the living experience would be cramped and confined, thus being insufficient for reasonable domestic activities. Therefore, the proposed development would not provide satisfactory living conditions for future occupiers or result in a high-quality home.
15. In reaching this view, I have taken into account the diverse architectural styles of the dwellings in the vicinity, which include small cottages. Some of these dwellings may have smaller rear and front gardens than those in the proposed development. However, there is limited information before me regarding the particular circumstances of those developments, specifically regarding whether

they comply with Policy D6. Nonetheless, it is imperative that I consider the appeal scheme on its own merits.

16. In conclusion, the proposed development would not provide adequate living conditions for future residents, with particular reference to internal living space. Accordingly, it would fail to meet housing standards which meet the needs of Londoners, contrary to Policy D6 of the London Plan 2021 and Policy 9 of the Sutton Local Plan 2018. It would also conflict with the SPD, as it would fail to create a sustainable place where people want to live.

Section 106 Agreement

17. The appeal site falls within a controlled parking zone, subjecting it to permit parking regulations requiring vehicles to display valid permits. The Council's stance is that this element of the proposed development could be accepted, provided that it is dedicated as being car/permit-free, thus preventing future occupants from obtaining parking permits.
18. The Council has proposed securing this through a Section 106 agreement, yet the appellant has not submitted such an agreement. Nonetheless, the Westminster City Council judgment clarifies that an obligation aiming to achieve car-free development by restricting future occupants from applying for parking permits would not align with the precise terms of S106 (1) of the Town and Country Planning Act 1990, as it would not pertain to land use. Rather, it would hinder the owner's ability to acquire a permit for on-street parking, rendering it unenforceable under S106(3) and S106(5) as it would not constitute a planning obligation. Instead, it would be a personal undertaking incapable of being registered as a local land charge and so, would not run with the land.
19. I recognise that the area around the appeal site contains yellow line parking controls, and that the adjacent public car park has the potential to provide a suitable location for parking. The Council has not provided any detailed evidence regarding local parking deficiencies, the capacity of the nearby car park, or the anticipated impact of the appeal proposal. Additionally, the appellant's parking study indicates that nearby streets, which are only a short distance from the controlled parking zone, do not experience significant parking stress. Therefore, despite the Council's reference to additional case law on this issue² and Section 16 of the Greater London Council (General Powers) Act 1974, I cannot be certain that the parking restrictions sought by the Council would be necessary to make the development acceptable. Furthermore, I am not persuaded that these restrictions would be directly related to the development and fairly and reasonably related in scale and kind.
20. Consequently, despite the development plan policy objectives, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010. Thus, the absence of a planning obligation does not weigh against the development.
21. I recognise that the dropped kerb would need to be replaced with a full height kerb. However, this could be resolved through the use of a Grampian planning

² In R (Khodari) V Royal Borough of Kensington and Chelsea Council and another [2017] EWCA Civ 333

condition, to ensure that appropriate highway works were carried out in the event that this appeal was allowed.

22. In conclusion, a planning obligation is not necessary to make the development acceptable, with particular reference to the provision of car parking. It would not result in unacceptable transport impact or result in an increase in on street parking which would adversely affect traffic flow, in compliance with Policies 36 and 37 of the Sutton Local Plan 2018.

Other Matters

23. Section 66 (1) of the Act requires that, in considering whether to grant planning permission for development which affects a listed building or its setting, special regard must be given to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses. The Orangery, No. 6 The Square, No. 16-20 The High Street, and the former Carshalton Library, all Grade II listed buildings, are situated near the appeal site. Due to the eclectic and diverse range of buildings already present, the proposed development would result in no harm to the setting of the listed buildings, thus preserving their significance.

Conclusion

24. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

S Lo

INSPECTOR