



Appeal Decisions

Hearing Held on 25 – 26 June 2024

Site visit made on 26 June 2024

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Appeal A: Ref: APP/A5840/W/23/3323681

Land at 105 Page's Walk, London SE1 4HD

- 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 outline planning permission.
- The appeal is made by Shiva Ltd against the Council of the London Borough of Southwark.
- The application Ref 23/AP/0165, is dated 20 January 2023.
- The development proposed is outline planning permission (with the matters of appearance, landscaping and layout reserved) for construction of 2 x 2-bedroom terrace houses and 1 x 4-bedroom terrace house.

Appeal B: Ref: APP/A5840/W/23/3331037

Land at 105 Page's Walk, London SE1 4HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Shiva Ltd against the Council of the London Borough of Southwark.
- The application Ref 23/AP/1602, is dated 8 June 2023, was refused by notice dated 8 August 2023.
- The development proposed is outline planning permission (with the matters of appearance, landscaping and layout reserved) for construction of 2 x 2-bedroom terrace houses and 1 x 4-bedroom terrace house.

Appeal C: Ref: APP/A5840/W/24/3342742

Land at 105 Page's Walk, London SE1 4HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Shiva Ltd against the Council of the London Borough of Southwark.
- The application Ref 23/AP/2688, is dated 25 September 2023, was refused by notice dated 5 April 2024.
- The development proposed outline planning permission (with the matters of appearance, landscaping and layout reserved) for construction of 3 x 2-bedroom terrace houses.

Decisions

1. Appeal A is dismissed, and planning permission is refused.
2. Appeals B and C are dismissed.

Application for costs

3. At the Hearing an application for costs was made by Shiva Ltd against the Council of the London Borough of Southwark against the appeals in the banner heading and Appeal Ref APP/TRN/A5840/9440. This application is the subject of a separate Decision.

Procedural Matters

4. The hearing was held in relation to the three appeal proceedings in the banner heading above and an appeal against the issue of a Tree Replacement Notice (TRN) under Ref APP/TRN/A5840/9440. I have considered the TRN appeal on its own merits in a separate decision letter. However, as the Inspector for that appeal, I have had regard to my findings in relation to all the appeals. The three appeals subject of this decision letter are by the same appellant for similar proposals and they raise similar issues for my consideration. While I have considered each appeal on its own merits, to avoid duplication I have dealt with them together, except where otherwise indicated.
5. The applications are made in outline with approval sought for access and scale, with appearance, layout and landscaping reserved for future consideration. Insofar as they relate to the matters reserved for future consideration, I have had regard to the plans as indicative only. At the hearing the main parties agreed that scale is defined by the height, width and depth of the external elevations of each building. I have considered the appeals on that basis.
6. The appellant submitted a revised plan with appeal B, which is the same the Council considered for the refused application in appeal C. That plan would change the description of the appeal B development and would be a significant and material change. Therefore, I have considered appeal B based upon the plan upon which the Council consulted interested parties and made its decision.
7. Appeal A is due to the failure of the Council to give notice of its decision within the prescribed time period. It subsequently advised it would have refused permission because the proposal did not make contributions to social housing, archaeological monitoring, and outdoor space, would not provide satisfactory living conditions for the future occupiers of new unit B2, and would result in harmful living conditions of the occupiers of Nos 101- and 103-Page's Walk. I have had regard to these matters in setting out the main issues below.
8. Though the Council did not refuse the appeal B scheme due to an absence of a contribution towards archaeological monitoring, it refused the appeal C scheme and expressed concerns about the appeal A scheme for this reason. There was also a reason for refusal in respect of the appeal C scheme due to the living conditions of No 103, not initially raised for the appeal A and B schemes, although concerns were raised in written evidence. The effects would be similar for all three schemes, so in advance of the hearing I advised the main parties these matters would be considered as main issues for all three appeals at the hearing, so they would not be prejudiced by my approach.
9. Similarly, although the Council didn't object to proposals A and B due to the character and appearance of the Page's Walk Conservation Area (the PWCA), it expressed an objection to the Appeal C scheme specifically due to an inability to comply with the TRN. The implications and effects of the three appeal schemes would be similar. Given my duties under section 72 of the Planning

(Listed Buildings and Conservation Areas) Act 1990 (the LBCAA), I have considered the effect upon the PWCA as a main issue for all schemes, which I advised the parties of in advance and heard evidence on this matter.

10. A draft section 106 agreement was submitted later than required by the Procedural Guide: Planning Appeals - England (2024), which I accepted. Following the hearing discussion, I allowed a further timescale for revisions to be made. Subsequently I was provided with three Unilateral Undertakings (UUs), which I have considered in determining the appeals.
11. Since appeals A and B were lodged, the 2022 Housing Delivery Test (HDT) results and the revised National Planning Policy Framework (2023) (the Framework) were published. I gave the Council and the appellant the opportunity to comment upon these matters and took these into account in determining the appeals. Any references below are to the new Framework.

Main Issues

12. The main issues are:

- whether or not the proposals in appeals A – C are compliant with policies for the provision of affordable housing;
- whether or not the proposals in appeals A – C are compliant with policies for the provision of outdoor space;
- whether or not proposals in appeals A – C are compliant with policies for archaeological remains;
- the effect of the proposals in appeals A – C upon the character and appearance of the PWCA;
- the effect of the proposals in appeals A – C upon the living conditions of the occupiers of Nos 101- and 103-Page's Walk, with particular reference to outlook, daylight and sunlight/overshadowing; and,
- whether or not the proposals in appeals A and B would provide satisfactory living conditions for the future occupiers of Unit No B2 with particular reference to outlook, daylight and sunlight/overshadowing.

Reasons

Social housing

13. Policy H2 of the London Plan (2021) (the LP) recognises the contribution small sites can make to housing delivery and LP Policy H4 seeks that 50% of all homes delivered are genuinely affordable. Southwark's Strategic Housing Market Assessment identifies a need for 2,077 social rented and intermediate homes per year comprising approximately 71% of Southwark's total housing need, so there is a very significant need for this type of housing.
14. Policy P1 of the Southwark Plan (2022) (the SP) states that developments must provide the maximum amount of social rented and intermediate homes, or a financial contribution towards the delivery of such homes with a minimum of 35%, subject to viability. The required contribution in accordance with Policy P1 is £560,000 for the appeal A and B schemes and £420,000 for appeal C.

15. The submitted UUs do not contain a definition of the affordable housing contribution. The amount of contribution in the UUs is left blank, which I am informed is to allow me to make my own assessment of a contribution. However, I cannot manually physically modify a UU and due to the UUs wording it does not bind the undertaker to findings in this decision letter. Of the trigger clauses, 'practical completion' is not specifically defined within the UUs. Therefore, the UUs would not secure affordable housing contributions.
16. The appellant's various Viability Assessments (VAs) suggest all developments are unviable if they provide an affordable housing contribution. The appellant considers a late-stage review clause could ensure that if they judge there to be sufficient profit in either development, a development could proceed. However, no such clauses are present in the UUs. The Council's VAs calculate that with a full affordable housing contribution, there is a significant surplus in each case.
17. The input with the widest disparity between the parties is the Benchmark Land Value (BLV). The appellant's BLVs are between approximately £1,000,000 - £1,308,000 as a price it is felt it may feel incentivised to sell the land. The Council VAs advance a BLV of £13,200 based upon its Existing Use Value plus (EUV+) measurement, which includes a premium in accordance with the London Mayor's Affordable Housing and Viability SPG (2017)¹ (the LMSPG).
18. The Planning Practice Guidance² (PPG) states VAs should be undertaken using BLVs derived in accordance with the PPG. The aim of the guidance is to ensure a consistent basis for assessing viability. The BLV should be based upon the EUV+ value. The EUV should be informed by market evidence (ME) of current uses, costs and values. ME can be used as a cross-check for EUV, however, it should not be used in place of BLV. The appellant states they would not sell the land for less than their ME values, which are reflective of previous offers for the land that appear to be based on an undefined Alternative Use Value (AUV). However, the PPG states an AUV should be based on developments fully compliant with emerging or up to date plan policies, including affordable housing requirements.
19. If I were to agree with the appellant's VAs conclusions, the appellant's BLV does not comply with this important PPG principle. This is established national guidance with which the guidance at 3.43 – 3.52 of the LMSPG is consistent. These guidance documents post-date the Council's Development Viability SPD (2016) (the DVSPD). Where there are differences, I give greater weight to the PPG and LMSPG as more up to date guidance.
20. EUV is not the price paid for land and should disregard hope value³. The appellant's previous offers were from developers who it appears considered an undefined AUV, appearing to be a value based upon achieving some form of future consent. Therefore, I regard these as hope values, which should attract limited weight in reaching a view on BLV. A previous Inspector's findings in 2016⁴ on how BLV was derived would now be unsound due to the revisions to the Framework and PPG in 2019⁵. The latest RICS guidance to which I have been referred differs from the advice referred to in that decision letter.

¹ Mayor of London – Homes for Londoners Affordable Housing and Viability Supplementary Planning Guidance (2017)

² Planning Practice Guidance Reference ID: 10-014-20190509.

³ Ibid Reference ID: 10-015-20190509.

⁴ APP/J1535/W/16/3151651.

⁵ PPG Reference ID: 10-015-20190509, 10-017-20190509, 10-019-20190509.

21. From the Council's VAs and Stretton's FVA (SFVA) the value of 121 Grosvenor Square is a hope value based upon some form of Planning Authority feedback relating to the acceptability of a dwelling, so I give it limited weight. The £115,000 EUV referred to in the SFVA appears to include comparisons with many sites with an element of hope value. With these discounted, £11,000 appears a realistic EUV and the 20% premium reflects up to date guidance.
22. In the absence of any certificate of lawfulness such as a meantime use for the display of art (use class F1(b)), the Council's EUV is based upon open land. No value for F1(b) is put to me, or other realistic AUV demonstrated, to suggest it would be significantly higher than the Council's valuation. I concur with both parties the lapsed historic permissions from 1989 and 1993, pre-application advice, a draft area action plan and reference to redevelopment in the PWCA Appraisal (2012) (the CAA) are of limited relevance to defining the EUV. Overall, based upon all the submissions in this regard, the Council's calculation is the most appropriate BLV put to me.
23. The appellant's Gross Development Value (GDV) evidence pre-dates the current market by some time. It is based upon estate agent experience in finding figures of £2,824,000 (appeal A), £2,760,000 (B) and £2,760,000 (C) (July 2023) or £2,586,000 (October 2023). The appellant suggests these may have reduced. The Council's GDVs are based upon named comparator sites in findings of £3,225,000 (A and B) and £2,850,000 (C).
24. The Council's analysis, comparison and discounting of some of the 11 properties appears well-reasoned in explaining the comparator range values and adjusting for the Land Registry Indices. Of the sold prices of 6no. Page's Walk houses provided by the appellant (PW-7), 3 are in the Council's analysis. Though there is little substantive analysis of these by the appellant, in conflict with RICS guidance, 5 of the 6 properties listed have a per square metre price around the Council's calculated equivalent, but the figures do not appear index linked. No 79's price was considerably lower, but without further analysis, such as in respect of its condition or configuration, I give it limited weight.
25. PW-8 for a property at Crucifix Lane represents a fairly recent valuation, with a GDV (depending upon whether GIA or IPMS is applied) significantly different to the Council's estimations for these proposals. Due to being under renovation at the time of valuation, more centrally located, but also very close what appears to be an arterial railway route, it is not directly comparable to the appeal site location.
26. One of the Council's comparator properties is listed in PW-8 as being larger than the Council set out, which would reduce its price per sqm. As the author of PW-8 measured the property plans rather than relying upon the Energy Performance Certificate, the PW-8 measurement is likely to be more accurate. This is not demonstrated as an issue with other comparators. Adopting the appellant's floorspace for Fendall Street, when divided across the remaining comparator properties of most relevance, would reduce the averages by a few percentage points. For this reason, I revise the Council's GDV down to £2,750,000 for the appeal C scheme and £3,112,000 for appeal A and B.
27. The appellant states their construction costs are real-view estimates based upon experience, reflecting proposed Victorian methods over a longer construction period and a high degree of craftsmanship and authenticity, as a labour of love. However, there was limited further substantiation in respect of

- components of a cost plan, specification and pricing of materials, so there is a lack of detailed evidence to support the assumptions and costs.
28. The same could be argued for the Council's evidence, although like the previous SFVA, it utilises the BCIS construction indices, which I understand to be a widely recognised cost index reflecting modern build requirements. The Council applies the costs rebased to Southwark (May 2024) at the upper quartile for a one-off terraced housing project to reflect good construction, specification of materials and finishes, to meet higher end modern standards. Of the prices put to me, there is little of substance to lead me to the view costs are likely to be greater than as the Council has set out, to build good quality contextually appropriate policy compliant homes.
29. The Council's approach to finance is to an all-in 100% debt interest rate of 7.5% and a credit rate of 2.5%, reflective of those rates offered by the market with finance costs accrued over the complete construction programme period. The appellant's finance basis and costs vary significantly between schemes, for which the Council sets out approach limitations, and there was little advanced to alleviate these concerns. The appellant's costliest example is over double the Council's finance cost with a 12% plus commitment and exit fees at a rate of 1% for 65% of the development cost. It is unclear why such high rates would be incurred for this 65% debt project in the current market. I favour the Council's approach in respect of borrowing costs.
30. There are some significant differences between many of the other costs of each party between their assessments. However, it would appear likely that even with finance costs attributed to borrowing the against all the appellant's higher remaining inputs, and adopting the STVA EUV+, the Appeal A and B developments would be viable with a full affordable housing contribution and Appeal C at least in part. Given that no affordable housing contribution would be provided, it is not necessary to scrutinise other FVA elements further.
31. I am satisfied affordable housing contributions are necessary to make the development acceptable having regard to development plan policies and the Framework, directly related to the development, and fairly and reasonably related in scale and kind to it. Therefore, the requirements in Regulation 122 of the CIL Regulations and tests in Framework paragraph 57 are met.
32. The PPG advises that in exceptional circumstances a condition might be appropriate where there is clear evidence the delivery of a development would otherwise be at risk, such as for particularly complex developments⁶. However, this has not been demonstrated. Though the appellant suggested a Grampian planning condition to secure obligations, none have been advanced for me to consider against the six tests for a condition, such as enforceability or precision. Incorporating any late-stage review might well add to a lack of precision. There are no other means of securing the contributions before me.
33. Therefore, for the reasons set out above proposals A – C would not make appropriate provision for a contribution towards affordable housing, so they fail to comply with Policy P1 of the SP and the aims of Policies H2 and H4 of the LP, the relevant provisions of which I have set out above. They also conflict with the aims of paragraph 60 of the Framework which seeks that sufficient land is

⁶ Planning Practice Guidance Reference ID: 21a-010-20190723.

brought forward to meet as much of an area's identified housing need as possible, including an appropriate mix of housing for the local community.

Open space

34. Policy P15 of the SP requires development achieves an exemplary standard of design, a high quality of accommodation for living conditions and private amenity space. The Fact Box to P15 and the Technical Update to Residential Design Standards (2015) (the RDS)⁷ expects new dwellings provide a minimum of 50 sqm of private amenity space that should be at least 10m in depth. The majority should be located rear of the property and be sufficiently private. Such space would ensure satisfactory living conditions for future occupiers.
35. Where the requisite private space cannot be provided, the Council will accept mitigation in the form of a £205 per sqm payment. This covers the costs of providing or improving nearby open space provision, including any construction and maintenance requirements, resulting in accessible higher quality open spaces, which could be used by new residents.
36. The appeal A and B proposals would result in spaces between approximately 20.8m – 31.2 sqm, and for Appeal C of between approximately 20.8sqm – 38.3sqm. The spaces would be significantly below the required size and depth, and with rather limited utility. Therefore, additional space is required to provide satisfactory and policy compliant living conditions. Contributions are therefore necessary to make the developments acceptable in planning terms, directly related to them, and fairly and reasonably related in scale and kind, so the requirements in the CIL Regulations and Framework paragraph 57 are met.
37. The submitted UUs do not contain a definition of the outdoor amenity space contribution, and the amount of contribution is left blank in the schedule, to allow me to make my own assessment. However, I cannot physically manually modify an obligation and the wording in the schedule does not bind it to my decision letter. Therefore, the UUs are flawed and incomplete, and would not secure the requisite contributions.
38. It has not been demonstrated there are exceptional circumstances for a Grampian condition, such as where there is clear evidence the delivery of a development would otherwise be at risk, as referenced in the PPG. Although suggested by the appellant, no conditions to require planning obligations to secure contributions, have been advanced for me to consider whether the six tests for a condition can also be met. There are no other means of securing the contributions, or suitable alternative open space, before me.
39. Therefore, for the reasons set out above, the developments subject of appeals A – C would not be compliant with policies for the provision of outdoor space, in conflict with Policy P15 of the SP and the standards in the RDS, the relevant provisions of are set out above.

Archaeology

40. Policy P23 of the SP requires developments conserve archaeology commensurate to its significance. Archaeological remains of local importance shall be preserved in situ unless the public benefits of a development outweigh their loss. Where they cannot be preserved in situ they must be excavated,

⁷ Section 3.1 of the RDS.

recorded, archived, published, interpreted, and displayed, or where justified, subject of public engagement, through a detailed programme of works.

41. The Section 106 Planning Obligations and Community Infrastructure Levy SPD (2020) (the POSPD) states the Council will seek obligations to support effective monitoring to ensure archaeology is properly managed and preserved. Contributions are calculated based on officer time needed to carry out named tasks – listed as examining the desk-based assessment (DBA), agreeing written schemes of investigation and monitoring fieldwork. This may include evaluations, excavations, watching briefs and building recording. For the appeal proposals each contribution is £3,389. Consultation with the archaeology officer may result in a change to costs in certain circumstances.
42. The appellant's DBA considered archaeological potential, suggesting investigation to clarify the likely impacts, with an evaluation to enable an informed decision for an appropriate mitigation strategy for any significant assets. The subsequent Archaeological Evaluation Report⁸ (AER) confirms the investigation trench was cut by a small pit and large ditch most probably of post-medieval age. It concludes the remains are of local significance, would be impacted by any future site redevelopment and mitigation would be developed by the Council. Further works can be secured by planning condition such as any mitigation, a watching brief in accordance with a written scheme of investigation, publication and archiving, as advanced by the Council.
43. The appellant's view is there is nothing found that merits attention, further conditions are unnecessary, and the fee is not justified so fails the CIL Regulation and Framework policy tests. The appellant also informed me that they can remove the remains and they would be given far greater care than would result from the Council's intended treatment of them, and the Council should contribute towards this. However, this does not appear to reflect the professional advice provided to me by the Council or appellant's advisers.
44. Development plan policy I have set out above is clear how remains of local significance will be treated. It is not put to me their loss would be outweighed. Without further conditions there would be no means to secure a more detailed programme of works that could incorporate measures sought by the policy or suggested by the appellant. These would require monitoring in accordance with the POSPD. However, the appeal schemes are at the lower end of the scale grade for the fee, and the appellant has already undertaken some of the works, so further work would be limited.
45. Based upon what is before me, the amount of fee sought by the Council is not fully justified and so does not pass the third CIL/Framework test, although no other fee is ventured, and some monitoring appears justified. The appellant's UUs, do not contain a definition of the archaeological contribution, and the amount of contribution is left blank in the schedule. I cannot physically manually modify an obligation and the wording in the schedule does not bind it to my decision letter. So the UUs are flawed and incomplete, and would not secure a contribution for archaeological monitoring.
46. There is no demonstration of exceptional circumstances or clear evidence the delivery of a development would otherwise be at risk expected by the PPG. No conditions to secure an obligation are advanced by the appellant for my

⁸ Archaeological Evaluation Report by MOLA (March 2024).

consideration against the six tests for a condition. There is no other means of securing a contribution before me.

47. Therefore, the developments subject of appeals A –C would not be compliant with policies for archaeological remains, in conflict with Policy P23 of the SP and the POSPD, the relevant provisions of which are set out above.

Character and Appearance of the PWCA

48. Within the PWCA there is a statutory duty under section 72 of the LBCAA to pay special attention to the desirability of preserving or enhancing its character or appearance. Paragraph 205 of the Framework requires that when considering the impact upon the significance of a designated heritage asset, great weight should be given to the asset's conservation, and harm to its significance requires clear and convincing justification (paragraph 206).
49. The PWCA includes terraces of mid-late 19th century dwellings and business units including a rendered office building with arched frontage windows and a 26-bay range. This range presents a blind arcaded elevation to the street in stock brick with paler brick voussoirs, a slate roof with ridge lanterns. The dwellings are stock brick two-storey properties including regular window openings, paired entrances, some variations of friezes, brick courses, stonework, cornices, and parapets fronting butterfly roofs, rear of which are regular modestly sized enclosed garden areas.
50. The character, appearance, and significance of the PWCA primarily derives from the historic pattern of built development, the use of historic local materials, roof profiles, and retained detailing including the window types and shapes, stone steps and sills, the functional and decorative brickwork, and the resulting strong degree of well-preserved rhythm. Some of the gardens clearly have vegetation features and the PWCA is over sailed by a few nearby trees which positively contribute to the character, appearance and setting of the PWCA.
51. The CAA identified the appeal site was having a detrimental effect upon the PWCA at that time. It has been part open land, housing art installations amongst vegetation including the previous TRN Eucalyptus tree, enclosed by varying fencing and gates. The site has evolved over time and may well continue to do so. Based upon what I saw and the evidence before me, it appears to me the appeal site with the TRN tree would have made an overall minor negative contribution to the character, appearance, and significance of the PWCA around the time it was felled.
52. As the TRN tree would have provided some softening of the built form within the PWCA, and some synergy with garden vegetation and trees oversailing the PWCA, its loss is considered to have resulted in a minor negative effect to the character and appearance of the PWCA. A replacement tree under the TRN would provide minor beneficial softening to the site, which would grow and increase with time, mitigating the harm from the felling. However, a tree in the position in the TRN would not be compatible with any of the proposals.
53. Though the proposed plots would be shallower, each appeal scheme would follow a similarly rhythmic development pattern, relating well to the character, appearance and significance of the PWCA. Based upon the size of the previous Eucalyptus, with careful species selection, the Council has not demonstrated it why it would not be likely to be possible to plant and retain total equivalent

replacement tree planting across the development as a whole, while maintaining the reasonable enjoyment of the new properties. On this basis the appeal proposals would not conflict with the aims of Policies P21, P61 of the SP and G7 of the LP and the aims of chapter 12 of the Framework. Amongst other things these require lost trees be replaced with new ones based upon their existing value taking account of canopy cover as measured by stem girth, no net loss of amenity or contribution to historic character or appearance.

54. As a matter of judgement, subject to the imposition of suitably worded conditions and reserved matters submissions, proposal A and B would make on-balance a very minor positive contribution to the character, appearance and significance of the PWCA compared to if the TRN tree was planted and retained. Due to the reduction in the annex height and setback form of the rear projection for B3 in Appeal C, that scheme would result in a greater but still on-balance limited positive effect. These are matters that weigh in favour of the schemes. The effects would be discernible from the southernmost part of the PWCA and on the approach to it from Mandela Way and Old Kent Road.
55. For the reasons set out above, in respect of this main issue as it specifically relates to the PWCA and TRN tree, the proposed developments A and B would overall, have very minor, and proposal C limited, beneficial effects upon the character and appearance of the PWCA. Therefore, I do not find a conflict with Policy P13 of the SP and Policy HC1 of the LP which in combination, require that development conserves and enhances the significance of heritage assets, and provides landscaping appropriate to its context. I also do not find a conflict with the parts of chapter 16 of the Framework of most relevance that I have set out above in respect of designated heritage assets.
56. The Council refers to chapter 15 of the Framework. However, this primarily relates to habitats and biodiversity, which is less relevant to this main issue than the policies I have set out above, and so I have not concluded against it.

Living conditions – Nos 101 and 103

57. The Council's written evidence expressed concerns about a two-storey annex upon Nos 101 and 103 in schemes A and B, due to effects upon outlook and overshadowing. However, at the hearing the Council clarified it finds the annex acceptable in respect of overshadowing, and there is no substantive evidence that is demonstrative I should come to an alternative view.
58. The two-storey annex would back onto to the rear garden of No 103 Page's Walk, being close to its rear projection, and the rear garden of No 101. Both Nos 101 and 103 both have quite limited width and depth of rear gardens facing southeast, which are enclosed within quite high boundary treatments. However, the absence of substantial built development immediately beyond the walls means, presently, they have a moderate degree of outlook.
59. An approximately 5m high annex so close to the boundaries of Nos 101 and 103 would result in a high degree of enclosure and it would feel dominant, overbearing and oppressive from a significant proportion of what are limited garden spaces. There is no substantive evidence that demonstrates the rear facing window of No 103's projection does not serve a habitable room. Due to the short distance from the window and the annex's scale, proposals A and B would also result harmful effects upon outlook from that internal space.

60. The degree of reduced outlook would result in significantly harmful living conditions to the occupiers of No 103 from the rear garden and any windows on the rear projection serving a habitable room. From No 101 from the rear garden there would be lesser but still markedly harmful effect. The position means it could offer little relief or mitigation from materials or landscape treatment to relieve it. Effects from development are unavoidable, but in this instance, it would be significantly detrimental, and cannot be considered to represent good quality design.
61. The first-floor window at No 103 serves a bedroom. No certainty could be offered by either party as to whether a rooflight at 103 served the hall/stairway or the bedroom. From what I heard of the layouts, the former would seem more logical, so I have considered it as such. The appellant suggested the first floor of B1 of proposals A – C would result in a similar arrangement and relationship with that bedroom window as others nearby. From what I was able to see and the appellant's photographs, I cannot identify instances of the same combination of height and rearward flank wall projection on one side, and relationship with its own outrigger opposite, with such a degree of enclosure.
62. The tall flank wall of the butterfly roof would be flush to No 103's boundary projecting around 3.3m rear of the window only marginally below the main ridge, and is greater than the recommended projection depth in the RDS. The combination of this and being flanked on the opposite side by its own outrigger, would result a high degree of enclosure, and a marked adverse effect upon outlook. Being due southeast of the window, there would also be a marked harmful effects upon daylight, reduced sunlight and increased overshadowing.
63. The Council's guidance⁹ in the RDS indicates if a development is higher and wider than lines drawn at 45 degrees upwards and 45 degrees sideways from the centre of a window, there may be an unacceptable loss of daylight. It is not demonstrated how this has been assessed. It appears the developments breach this, from what is a modest single first floor window. Though the Council suggested in some pre-determination correspondence and an unsigned Statement of Common Ground that design issues would be overcome by the appeal C scheme, it is clear from what I heard and the evidence before me there would be some clearly harmful effects from all three schemes.
64. I also questioned the parties but am still not fully clear how the RDS guidance for sunlight or overshadowing is applied to the first-floor window in question. Even were the development to have found to be compliant in respect of sunlight and overshadowing, this would be a neutral matter. The evidence suggests the first-floor rear elevation of B1 might only extend a small amount if at all beyond No 103's closest ground floor facade so would have very limited effects. The ground floor projections would extend beyond the closest ground facade, but it appears it would be entirely below the level of the retained boundary wall, so it would not adversely affect the ground floor of 103.
65. An absence of objection alone from a neighbour cannot alone be taken as a measure of whether a development is harmful or not. Dwellings are part of a long-term stock, but their occupancy is transient over time, and what may be regarded as tolerable to one occupier, may not be so to another. Though it was also put to me by the appellant what is proposed would have no worse

⁹ Pages 17 and 18 of the 2015 Technical Update to the Residential Design Standards (2011).

effect than other developments the Council has permitted, no detailed plans were offered to demonstrate such effects, so I attribute this limited weight.

66. For the reasons set out above proposed schemes A – C would have harmful effects upon the living conditions upon the occupiers of No 103 by virtue of a loss of daylight and outlook to the first floor. Schemes A and B would result in harmful living conditions to a ground floor window at No 103 as well as the loss of outlook to its garden, and a loss of outlook to the garden of No 101. The proposals would conflict with Policies P13, P14 and P15 of the SP and Policies D4 and D6 of the London Plan (2021) (the LP). In combination these require that development is of a high-quality design that responds positively to its context and ensures adequate outlook and daylight for adjoining occupiers.
67. The proposed developments would conflict with paragraph 135f) of the Framework which requires that development provides a high standard of amenity for existing and future users. They would also conflict with the aims of guidance set out in the RDS which seeks to ensure that developments seek to minimise the blocking of light to adjoining properties.

Living conditions – occupiers of Unit B2

68. Appeal schemes A and B would result in the two-storey flank elevation of B3 along the length of one side boundary of B2's garden, with the single storey projection of B1 along the opposite boundary. In combination, they would result in a high degree of enclosure to the ground floor elevation, and space in what would be quite a modest garden. Therefore, the outlook from the ground floor window and most the garden would feel enclosed, oppressive and overbearing.
69. Whether or not B2 might still be considered a desirable house by some, proposals A and B would not provide satisfactory living conditions to the future occupiers, and this would not be mitigated or outweighed by the overall standard or form of accommodation. There would be a sufficient degree of outlook from the first-floor window. However, this does not mitigate the unsatisfactory conditions for the rear ground floor internal space and garden.
70. Neither the Council or the appellant have provided detailed evidence to unequivocally demonstrate whether or not unit B2 could meet the Council's RDS or Building Research Establishment guidelines for daylight and sunlight into the dwelling. In the absence of substantive evidence to the contrary, the indicative sizeable amount of glazing appears to suggest, despite the degree of enclosure, any future developments could meet the Council's tests for the percentage of glazing serving a given room and direction of aspect to provide adequate daylight and sunlight. Therefore, I consider there to be a sufficient extent of open aspect due southeast to provide a satisfactory level of sunlight and daylight to the garden and internal rooms of B2. However, it would not mitigate or outweigh the unsatisfactory living conditions in respect of outlook.
71. For the reasons set out above proposals A and B would not provide satisfactory living conditions to the future occupiers of B2 with particular reference to outlook. They would therefore conflict with the aims of Policies P14 and P15 of the SP, Policies D4 and D6 of the London Plan (2021) (the LP) and paragraph 135f) of the Framework, the relevant provisions of which I have set out above.

72. As there is no specific standard put to me or set out for outlook in new dwellings, I do not find a conflict with the provisions of the RDS in this regard.

Other Matters

73. The appeal site lies within an area at high risk of tidal flooding. The Council informed me it regards the sequential test as being satisfied because of flood risk work undertaken at strategic level towards the Draft Old Kent Road Area Action Plan. Given the Thames breach modelling data and extent of protection flood defences offer to a large area of London, the parties agree I can have full confidence they will be retained and maintained. Moreover, they are subject of a programme of improvement under the Thames Estuary 2100 Plan.
74. Though the appellant considered the requirements to be 'a bit abstract', the Council suggested the Framework's Exception Test would be met. There would be sustainability benefits in the form of both temporary and sustained economic benefits, social benefits from additional housing and some environmental benefits, such as to drainage, and biodiversity, which are sufficient to outweigh the risk of flooding.
75. It would seem perfectly possible that within the scope of reserved matters submissions and by imposition of suitably worded conditions, the developments could be designed to be safe for their lifetime without increasing flood risk elsewhere. While there were some reservations on the appellant's part, I see no reason why a suitably flood resilient design to meet important Framework policies, could not also ensure a high standard of design and satisfactory living conditions for future occupiers in reserved matters submissions.

Planning Balance

76. Though it only represents a snapshot in time, the Council can currently demonstrate a housing land supply just over 5 years, although the evidence suggests there has been significant recent under delivery of housing, with the HDT measurement being 66%. Therefore, paragraph 11d) of the Framework is engaged, the policies most important for determining the applications are considered out of date, and the tilted balance applies.
77. The proposals would each result in a modest temporary economic benefit during construction and once complete a small on-going benefit through spend in the local economy and the support to local services, facilities and related employment. The provision of an additional three market dwellings would be a small benefit to supply. Each of the proposed developments would result in some benefits as set out above, to the character and appearance of the PWCA.
78. The equivalent replacement tree planting would be a neutral matter. Though the overall scope might be limited, the proposals could secure some limited overall net biodiversity gain. There might be scope for the provision of some renewable energy generating technologies, although it is not demonstrated this would result in a net benefit, so would be a neutral matter. It appears there could also be limited improvements to drainage.
79. Were I to agree the proposed developments would be, or subject to the imposition of suitably worded planning conditions, could be made compliant with policies and standards in respect of matters such as the principle of the proposed land use, highway safety and access standards, car free housing, construction management, air quality, contamination, fire safety, resource and

energy efficient construction and design, these would be neutral matters in the balance. I am informed the appellant has alternative facilities to accommodate the display of art, so its loss should not weigh against the scheme.

80. Overall, the policy compliance and benefits of each of the developments attract moderate weight in favour of each of the schemes. However, the proposed developments would conflict with policies for affordable housing, where there is a significant need. This is a matter carries very significant weight against each of the schemes. The proposals would not secure contributions towards open space provision or archaeological monitoring.
81. Appeal schemes A and B would not provide satisfactory living conditions for the future occupiers of unit B2, which given the level of policy conflicts is attributed moderate weight against the scheme. Each appeal scheme would result in harmful effects upon neighbouring occupiers at Nos 101 and 103. In the case of schemes A and B by virtue of the annex it would be particularly harmful. The overall harm for A and B attracts significant weight against the schemes. In the case of Appeal C, I attribute the harm moderate weight against the scheme. Overall, the totality of harm and policy conflicts from each development is of a high order.
82. Though they differ to a small degree, I conclude the magnitude of the harms and the degree of policy conflicts for each respective appeal scheme are such that overall, the adverse impacts of each development significantly and demonstrably outweighs the policy compliance and benefits of each of the respective appeal schemes, when assessed against the policies in the Framework taken as a whole. Therefore, the appeals should not succeed.

Conclusion

83. Each of the proposed developments subject of appeals A, B and C would be contrary to the development plan read as a whole, and the Framework. There are no considerations advanced, including the policies of the Framework, which outweigh these findings. Accordingly, for the reasons given, the appeals should not succeed, and planning permission is refused.

Dan Szymanski

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Russell Gray, Company Secretary, Shiva Ltd;
Mr Ravi Bhaskaran, In-house Architect, Shiva Ltd;
Mr Alex Brown, Admin of Shiva Ltd.

FOR THE COUNCIL:

Mr P Ricketts BA (Hons) MRTPI, Council of the London Borough of Southwark;
Mr L Bullen BA (Hons), Council of the London Borough of Southwark;
Mr M Lambert BA (Hons), PgDip, LRTPI, Council of the London Borough of Southwark;
Mr A Murphy BSc (Hons) MRICS, Atitlan Consulting;
Mr T Cutts, Council of the London Borough of Southwark.

INTERESTED PARTIES:

Mr Herbert Saller (Local Resident).

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

PW-1: Decision letter for Appeal Ref. APP/A5840/W/23/3326266;
PW-2: Email submission of 21 June 2024 of Design & Access Statement, Pre-Application Design Statement, Drawings NMC01 and NMC02;
PW-3: Site photographs of 25 September 2021;
PW-4: Site photographs of 4 January 2022;
PW-5: Draft planning obligation Ref. Application 23/AP/2688, 26 June 2024;
PW-6: Email dated 25 June 2024 from the Borough Archaeologist;
PW-7: Pages Walk Terrace Property Prices (Source: rightmove);
PW-8: Residential Valuation Report for Land at 12 Crucifix Lane, SE1 3JW by Hortons Group (Valuation date 28 March 2024);
PW-9: Email dated 13 July 2024 from R Gray in respect of replacement tree planting.