



Appeal Decision

Hearing held on 18 September 2024

Site visit made on 18 September 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

Appeal Ref: APP/P5870/C/24/3338817 76-78 Westmead Road SM1 4JF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Miheer Mehta (Sterling Rose Homes c/o Westmead Road Ltd & MM7 Investments Ltd) against an enforcement notice issued by the Council of the London Borough of Sutton.
 - The notice was issued on 15 January 2024.
 - The breach of planning control as alleged in the notice is the erection of an additional storey on top of a three-storey building to provide 1 x one bed flat and 1 x 2 bed flat.
 - The requirements of the notice are: Either (i) remove the entire building as shown on the site plan restoring the land to the condition in which it was prior to the breach of planning control taking place, or (ii) remove the unauthorised 4th floor of the land; and (iii) restore the land to that which was approved pursuant to planning permission DM2018/00790 including all relevant conditions (iv) remove from the land any and all building materials and rubble arising from compliance with steps 5(i), 5(ii) and 5(iii) above.
 - The period for compliance with the requirements is: 6 months
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.
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Decision

1. The appeal is allowed and the enforcement notice is quashed. 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 carried out, namely the erection of an additional storey on top of a three-storey building to provide 1 x one bed flat and 1 x 2 bed flat at 76-78 Westmead Road SM1 4JF as shown on the plan attached to the notice, and subject to the conditions set out in the attached schedule.

Ground (a) – the deemed planning application

Background and Main Issue

2. The appeal site is situated on the southern side of Westmead Road and is occupied by a four-storey building. Planning permission¹ was granted in 2018 ("the 2018 permission") for the "*Demolition of the existing buildings and erection of a three storey building comprising 8 self contained flats with ground floor commercial floor space*". There is no dispute between the parties that this permission was implemented, albeit with the erection of an additional fourth

¹ Council Ref: DM2018/00790

storey. The enforcement notice attacks only the additional fourth storey which the Council considers has an adverse impact on the character and appearance of the site and street scene.

3. Consequently, the main issue is the effect of the development on the character and appearance of the host site and surrounding area.

Reasons

4. Policy 28 of the Sutton Local Plan 2016-2031 (adopted February 2018) (SLP) requires that new development should, amongst other things, respect local context, respond to local character, and be of suitable scale, massing, and height. The Policy also defines "Taller Buildings" which should be located within identified "Areas of Taller Building Potential" (AOTBP). It is common ground between the parties that the appeal site is not located within an AOTBP.
5. The definition of "Taller Buildings" in Policy 28 is split into three sub-categories, namely "Mid-Rise Buildings", "Tall Buildings", and "Very Tall Buildings". The only category potentially applicable to the appeal development is "Mid-Rise Buildings" which are considered *"to be tall in the context of relatively low-rise development. In absolute terms, they are in the region of 4 to 6 storeys (12 to 18m)"*. Although less than 12 metres in height, the Council contend that as the appeal building is four storeys in height the development meets the SLP definition of a taller building.
6. However, Policy D9 of the London Plan 2021 (LP) also defines "Tall Buildings". Whilst it states that development plans should define what is considered a tall building for specific localities, and that the height will vary between and within different parts of London, Policy D9 sets out that a tall building should *"not be less than 6 storeys or 18 metres measured from ground to the floor level of the uppermost storey"*. The appeal building therefore clearly does not meet the definition of a tall building as set out in the LP.
7. Consequently, there is a conflict between Policy 28 of the SLP and Policy D9 of the LP in terms of the definition of tall buildings. Both the SLP and the LP form part of the development plan and section 38(5) of the Planning and Compulsory Purchase Act 2004 states that where there is a conflict between policies in different plans, the conflict must be resolved in favour of the more recent policy. In this case, the conflict must be resolved in favour of the LP. Accordingly, the development does not meet the definition of a tall building.
8. The appeal site is located within Westmead Road Local Centre which is characterised by a mix of commercial and residential uses. The surrounding built form comprises predominately two storey buildings, with the occasional three-storey building including the nearby Care Home on the corner of Cowper Avenue and Westmead Road. By virtue of the mix of uses, along with the range of different building styles, materials, form, and age, there is a varied and mixed character with little consistency in the appearance of the surrounding properties.
9. Whilst there are no other four-storey buildings in the immediate vicinity of the appeal site, there is considerable variation in building heights and roof forms which adds interest to the street scene. The additional storey results in the appeal building being taller than other nearby properties, however this increase in overall height is relatively modest. As such, the appeal development is seen

- in the context of the diversity in surrounding building heights and does not appear out of place given the varied roofline prevalent in the area.
10. Although the aluminium cladding used in the construction of the additional storey contrasts with the brickwork on the host building, I do not consider this contrast to be harmful. Additionally, whilst the use of contemporary materials such as aluminium cladding are not prevalent in the surrounding area, its use being limited to fourth floor level ensures it does not unduly dominate the building and instead provides visual interest that complements, rather than conflicts with, the varied property designs and materials within the wider area.
 11. The additional storey is set back from the front and side elevations, resulting in it appearing as a recessive element that does not dominate views from either Sutton Grove or Westmead Road. Indeed, due to a combination of this set back and the materials used, the development remains subservient and appropriate in scale when seen in the context of the original building and those surrounding.
 12. Adjacent to the appeal site to the east lies the site known as 71-75 Westmead Road, which is located on the corner of Westmead Road and Carshalton Grove ("the adjacent site"). The adjacent site is currently vacant and largely free of built development which leaves the appeal building more prominent in wider views from the east. However, this absence of built form on the adjacent site means that the appeal building was already prominent in those views, and the additional storey does not significantly increase that prominence nor does it result in the development appearing overly dominant.
 13. Furthermore, whilst the adjacent site is currently largely devoid of any built development, it benefits from an extant planning permission² for "*the erection of a part three, part four storey detached building to provide 35 self contained residential units...*". At the hearing the Council confirmed that pre-commencement conditions on the permission had been discharged which, along with the demolition of buildings on the site, meant that the permission had been implemented. It is therefore likely that the approved development on the adjacent site will be constructed, which due to its size and height will significantly reduce the prominence of the appeal building and largely screen the development from views from the east.
 14. Drawing the above points together, the design, scale, massing, and height of the development is acceptable, and it does not appear as an incongruous, unsympathetic, and overly dominant form of development. I therefore conclude that the development does not result in harm to the character and appearance of the host site or surrounding area.
 15. Accordingly, I find no conflict with Policy 28 of the SLP, and guidance contained within Sutton's Urban Design Guide SPD³. Together these require, amongst other things, that developments respond to local character and be of suitable scale, massing, and height.
 16. The Council also referred to Policies D1, D4, and D8 of the London Plan in its reasons for refusal. However, Policies D1 and D4 are not directly relevant as they relate to policy formulation and how development can be assessed and

² Council Ref: DM2019/02148

³ Creating locally distinctive places: Sutton's Urban Design Guide Supplementary Planning Document (January 2008)

scrutinised to maintain design quality. Policy D8 relates to the delivery of public realm and is therefore not relevant to the consideration of the appeal scheme.

Other Matters

17. At the hearing an interested party raised concerns regarding the quality of the build and a lack of maintenance, with particular reference to leaks that are said to have started in her flat following the erection of the additional storey. Such matters though do not fall within the remit of this appeal decision.

Conditions

18. I have considered the conditions suggested by the Council having regard to the six tests in the National Planning Policy Framework. Where necessary I have made changes to the wording of conditions in the interests of precision, clarity, and enforceability.
19. I acknowledge the appellant's claim that many of the suggested conditions were imposed on the 2018 permission and subsequently discharged. Nevertheless, I find the required details are also relevant in relation to the additional storey which is the subject of this appeal. The parties agreed at the hearing that these details should be submitted to and approved by the Local Planning Authority prior to the occupation of the development.
20. Conditions 1 and 2 are required to ensure the development is energy and water efficient and to comply with Policies 31 and 33 of the SLP. Condition 3 is imposed to ensure satisfactory cycle parking provision and to accord with Policies 36 and 37 of the SLP. Condition 4 secures adequate refuse arrangements in the interests of protecting the character and appearance of the area and the living conditions of both occupants and neighbours as required by Policies 28 and 29 of the SLP.
21. Condition 5 is imposed in the interests of fire safety and to comply with Policy D12 of the LP. Finally, conditions 6 and 7 are necessary in order to protect the living conditions of neighbouring residential properties and to ensure the development complies with Policy 29 of the SLP.

Conclusion

22. The development does not cause harm to the character and appearance of the host site and surrounding area and there is no conflict with the development plan as a whole. There are no material considerations that indicate the ground (a) appeal should be determined other than in accordance with the development plan.
23. For the reasons given above, I conclude that the appeal succeeds on ground (a) and planning permission is granted in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended. In these circumstances the appeal on ground (g) does not fall to be considered.

David Jones

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Prior to the occupation of the development hereby permitted, an Energy Statement incorporating 'as designed' Standard Assessment Procedure (SAP) outputs shall be submitted to and approved in writing by the Local Planning Authority. The statement shall demonstrate how the dwellings hereby approved will apply the Mayor's energy hierarchy (use less energy, supply energy efficiency and use renewable energy) to achieve at least a 35% reduction in CO2 emissions below the target emission rate (TER) based on Part L1A of the 2013 Building Regulations and at least a 10% reduction in total emissions (regulated and unregulated) through on-site renewable energy generation. The development hereby approved should exceed the minimum Part L1A emissions through energy efficiency measures alone. The development shall be carried out in accordance with the approved details and thereafter retained.
- 2) Prior to the occupation of the development hereby permitted, a completed water efficiency calculator for new dwellings must be submitted to the Local Planning Authority and approved in writing. The completed water efficiency calculator must show that internal potable water consumption for each of the dwellings hereby approved will be limited to 110 litres per person per day (l/p/d) based on the Government's national calculation method for water efficiency for the purposes of Part G of the Building Regulations. The water efficiency calculator should be accompanied by details of the location and type of all appliances or fittings that use water, the capacity or flow rate of any equipment and any rainwater or greywater collection systems incorporated as part of the development. The development shall be carried out in accordance with the approved details and thereafter retained.
- 3) Prior to the occupation of the development hereby permitted, full details of the secure cycle storage facilities shall be submitted to and approved in writing by the Local Planning Authority. These details shall show their positioning within the site, the size and materials of the enclosure and the means of access. The approved details shall be implemented on site prior to the first occupation of the development hereby permitted and thereafter permanently retained in accordance with the approved details.
- 4) Prior to the occupation of the development hereby permitted, a scheme detailing refuse and recycling storage shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full prior to the first occupation of the development and retained thereafter.
- 5) Prior to the occupation of the development hereby permitted, a Fire Safety Strategy pursuant to Policy 12(A) of the London Plan shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 6) No further balconies shall be created and the area of flat roof surrounding the additional storey hereby permitted shall not be used, at all or in part, as a terrace, seating area, or other amenity space. No railings, fences, walls, or other means of enclosure shall be erected on the building.
- 7) Access to the flat roof surrounding the additional storey hereby permitted shall be for maintenance or emergency purposes only.

APPEARANCES

FOR THE APPELLANT:

Lauren Westley	Planning Agent
Miheer Mehta	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Simon Chalcroft	Planning Enforcement Manager
Maeve Wylie	Planning Enforcement Officer
Katy Johnson	Planning Officer

INTERESTED PARTIES:

Marina Morcos	Resident
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DOCUMENTS SUBMITTED AT THE HEARING

Policies 29, 31, 33, 36 and 37 of the SLP

Policy D12 of the LP