



## Appeal Decision

Hearing held and site visit made on 3 July 2018

**by Brendan Lyons BArch MA MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 6<sup>th</sup> November 2018**

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**Appeal Ref: APP/P5870/W/17/3188985**

**Victoria House, 388 Malden Road, Cheam SM3 8HY**

- 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 Home Group against the decision of the Council of the London Borough of Sutton.
  - The application Ref A2016/75951/FUL, dated 28 November 2016, was refused by notice dated 16 May 2017.
  - The development proposed is described as demolition of existing building and erection of part four (4) part seven (7) part nine (9) part ten (10) storey mixed-use building with 88 residential units (Use Class C3) in a mix of 1, 2 and 3 bedroomed flats (including affordable units) and up to 518.4 sq.m of commercial floorspace (Flexible Use Class A1-A3/B1/D1/D2), together with the provision of associated landscaping, cycle spaces, car parking spaces, formation of new and amended vehicular access off Church Hill Road, public realm improvements and other ancillary works.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. The site address used in the planning application form was altered in the Council's decision notice, and the revised address was then used in the planning appeal form. It is also set out in the Statement of Common Ground ('SoCG') agreed between the main parties to the appeal, and I have adopted it in the decision heading above.
3. During consideration of the planning application the proposal was amended to omit two residential units, reducing part of the proposed building to nine storeys. Interested parties were able to make representations on these changes, and I have assessed the appeal proposal in its revised form. The changes are reflected in the description of development in the Council's decision notice. The description in the heading above adopts that used on the appeal form and agreed in the SoCG.
4. The SoCG sets out an agreed description of the site and surrounding area and the planning history of the site. Marked-up plans show the agreed spacing between the proposed development and surrounding buildings and the height of the proposed buildings relative to that for which planning permission had

been granted in 2013<sup>1</sup>. Matters agreed between the main parties are set out, but some of these remain disputed by interested parties.

5. The SoCG also sets out the local and national policy context. In local terms, it explains how the policies of the Sutton Local Plan ('SLP'), adopted in 2018 since the application was refused, have superseded those of the former Sutton Core Planning Strategy (2009) and Site Development Policies DPD (2012) cited in the reasons for refusal. In national terms, the SoCG records that consultation was under way on a revised National Planning Policy Framework ('NPPF'). Since the Hearing was closed, the updated NPPF has now been published, and the appeal must be determined in accordance with this up-to-date policy. Neither main party availed themselves of the opportunity given to comment on the implications of the updated NPPF, with the appellant relying on their previously submitted views on the consultation draft. The appeal has been determined in accordance with the up-to-date local and national policies.
6. In the run-up to the Hearing, the appellant had sought to conclude a planning obligation under Section 106 of the Act<sup>2</sup>, in the form of an agreement with the Council. An alternative obligation, in the form of a draft unilateral undertaking ('UU') was presented at the Hearing. These were intended to address the fourth and fifth reasons for refusal of the planning application. As the final terms of the agreement had not been concluded by the close of the Hearing, further time was allowed for the UU to be legally executed. A copy of this document, including some very minor textual amendments, was then submitted in accordance with the agreed timetable. The provisions of the UU are considered later in this decision.
7. At the opening of the Hearing, the appellant asked that plans<sup>3</sup> showing the layout of three types of flat should be substituted for those provided with the appeal submission. As the amendments seek to address a minor error, I concluded that no other party's interests would be prejudiced by the substitution and I have taken the revised plans into account.

## **Main Issues**

8. In the light of the reasons for refusal of the application and the matters subsequently agreed, I consider the main issues in the appeal to be:
  - The effect of the proposed development on the character and appearance of the area, with particular regard to its height and massing and the quality of its design;
  - The effect on the living conditions of adjoining residents with particular regard to potential overlooking;
  - Whether the proposal would satisfactorily address transport impacts;
  - Whether the proposal would deliver the maximum viable provision of affordable housing, having regard to the potential for a late stage review mechanism.

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<sup>1</sup> Permission ref A2013/67211/FUL

<sup>2</sup> Town and Country Planning Act 1990 as amended

<sup>3</sup> Plans (PL)42 Rev B: Flat Type B/b 2B4P, (PL)43 Rev B: Flat Type B/c 1B2P, (PL)45 Rev B: Flat Type B/e 2B4P

## Reasons

9. The appeal site takes up one corner of a main crossroads junction on the A24 road through North Cheam, in Outer London. The site is occupied by a vacant, semi-derelict building that when in use provided retail units on the ground floor facing the junction, with two floors of offices in a block suspended above a first floor parking deck. To the rear a two-storey element was occupied by a public house facing onto the otherwise residential Church Hill Road.
10. The development now proposed would clear the site and provide three ground floor units facing the junction, with potential retail, business or service/leisure use, above which 88 flats would be provided in two separate blocks that would share a communal garden on the first floor deck. The taller block, rising at its highest to 10 storeys, would follow the London Road frontage and continue round the corner onto Malden Road, while the smaller block, of maximum 7 storeys, would be aligned with Church Hill Road, presenting an end elevation to Malden Road. Parking for 50 residents' cars and a 'club' car would be provided below the first floor deck and on the Church Hill Road frontage. The landscape treatment of the public space at the junction would be enhanced.

### *Character and appearance*

11. The buildings on the appeal site currently form an eyesore in a very prominent location. There appears to be no dispute, even among objectors to the appeal proposal, that the site is in need of redevelopment. This is reflected in the development plan, where the site is allocated by SLP Policy S35 for mixed use development comprising residential, retail and town centre uses. The Council accepts that the mix of uses now proposed would be in accordance with this policy, and also that the proposed ground floor uses would meet the policy requirement for sufficient retail and office space to create an active frontage at the crossroads. Although some local residents have expressed concern about the viability of retail uses in this location, I find that the restoration of active ground floor uses around the main street frontages would be a significant benefit of the appeal proposal. The range of alternative uses applied for, including the potential for community uses, would allow sufficient flexibility to maximise the site's potential contribution to the vitality of the District Centre.
12. The Council's primary concern is with the form and scale of the proposal. In design terms, SLP Policy S35 seeks a high-quality redevelopment that will define North Cheam District Centre. Among the requirements to which any development of the site "should pay particular regard" is the site's location within an Area of Taller Buildings Potential, here defined as a height of four to six storeys, and also to the 2013 planning permission for the redevelopment of the site. That scheme included ground floor retail units around the edges of the site, with apartments above in a continuous block that wrapped around the main street frontages, stepping up in height to a recessed fifth floor, with a narrower tower element rising a further three storeys.
13. The North Cheam District Centre extends along both sides of London Road to the north and south of the appeal junction, with shorter spurs to the east and west along Malden Road and Cheam Common Road. The District Centre predominantly comprises parades of shops and other commercial uses, with ancillary uses or residential units above, set within a mix of three-storey and two-storey frontage blocks. There is also a large supermarket set back from London Road. The street scene has been enhanced by improvements to

- footways and street furniture and the introduction of some tree and shrub planting.
14. The buildings mainly date from the inter-war period, consistent with the surrounding suburban housing. They are built in a range of styles typical of the period, probably the most prevalent being a stripped neo-Georgian, characterised by brick fronts with subdivided white-painted sash-type windows. Some long two-storey rows adopt a mock-Tudor style, with exposed timber detailing and tiled roofs. There are also several blocks with distinct Art Deco influences, the most prominent being Lavender Corner, directly opposite the appeal site, which retains some original details and is included on the Council's local list of buildings of interest.
  15. The District Centre marks an intensification of activity as an incident along the major suburban route. But the overall character of the centre is relatively modest in terms of its retail role and predominantly low-rise in terms of its physical form<sup>4</sup>. The appeal site junction does not appear to be a major crossing at the metropolitan scale, but of relatively local importance.
  16. The identity of the junction is distinguished by the original buildings on each corner extending their unbroken façade treatment to create a diagonal face, arranged to address the crossing in an axial layout. This is most strongly expressed by Lavender Corner, but the other two buildings are also set out in this way. As evidenced by the historic mapping in the DAS, this layout was a considered design response to the formation of the expanded junction. The rather formal response suggested a more static space which gave some emphasis to the status of the junction, and is key to the centre's local distinctiveness. The existing buildings on the appeal site represented a major departure in terms of architectural style and materials from the earlier buildings, but the essential relationship with the corner is observed: the ground floor units provide an unbroken retail frontage linking the London Road and Malden Road frontages, above which floats the office element, enclosing the space on the diagonal.
  17. The appeal proposal would not observe this established relationship. The proposed building would turn the corner in a stepped plan form, resulting in a series of edges being presented to the junction rather than the formal diagonal frontage set up by the existing buildings. And rather than an unbroken frontage carrying around the corner, the building would be divided above ground floor level by the gap between the two blocks, thereby opening a slot into the depth of the site. The result would be a much more restless and dynamic built form than found on the other three corners of the junction.
  18. Because of the length of their frontages compared to their modest height, the buildings on the other corners tend to have a horizontal emphasis in form and massing. The appeal proposal, owing to its stepped plan form with expressed corners, and its height rising from four storeys to ten storeys, would appear more as a series of vertical elements joined together.
  19. The above effects are well illustrated in the visualisations provided of the views towards the junction along Cheam Common Road and north along London

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<sup>4</sup> The first reason for refusal of the planning application refers to the "established mid-rise scale and form of development" but only the existing building on the site is taller than three storeys. I consider 'low-rise' a more accurate description.

- Road. The views also show the extent to which the building, seen in its context, would appear as an over-dominant feature owing to its much greater height than the surrounding buildings. There would be little sense of coherent dialogue between the building and the other corner buildings. Nor would there be any clear sense that the location on one corner of the junction was of such civic significance that a building of such dominance was merited.
20. The wording of SLP Policy S35 in respect of building height is the subject of some difference of interpretation by parties to the appeal. The policy identifies the Area of Taller Building Potential that includes the appeal site as suitable for buildings of four to six storeys. This is the lowest of the three gradations of "taller buildings" defined by the supporting text to SLP Policy 28. At ten storeys, the appeal proposal would be at the upper limit of the second gradation ("Tall buildings", defined as "significantly taller than the mean height of surrounding development"). Thus the appeal proposal would not, on its face, accord with Policy S35. Its dominance would be likely to persist for some considerable time, even in the event of a more general increase in building heights within the District Centre.
  21. However, the Council conceded at the Hearing that the subsequent sentence in Policy S35, which refers to "any proposals for taller buildings", should be read to mean "buildings taller than four to six storeys". But this sentence also echoes the general criteria of Policy 28, in requiring any proposals for taller buildings to be exceptionally designed and respect local context and character. The appeal proposal would be well designed in its own terms as a tall building, but for the reasons already outlined it would not adequately respond to the local context. Even the officer report that recommended approval of the planning application acknowledged that the design could not be regarded as of exceptional design quality.
  22. Some support for a building taller than four to six storeys can also be found in the requirement to have particular regard to the scheme permitted in 2013. But only a relatively narrow central tower feature of that proposal rose above six storeys. The tower element formed a strong feature of that design, as the centrepiece on the diagonal of its unbroken frontage around the perimeter of the junction. In that way, despite its greater absolute height, the form and massing of the permitted scheme provided a successful response to the existing context. As shown in the DAS, the appeal proposal would be taller in absolute terms than the permitted scheme and would have considerably greater mass at the upper levels.
  23. I acknowledge that the desire to create efficient floor plans has been a key consideration in the design of the appeal proposal, and that the introduction of the gap to form two separate blocks may well be beneficial in allowing sunlight into the depth of the site, which the earlier scheme would not have. However, the decision would have significant adverse impacts in townscape terms, by breaking the frontage and by resulting in increased height to accommodate the desired number of units. I also agree with the Council that the gap would not appear in three dimensions quite as wide as shown in the opened out elevation drawings. It has not been shown that the benefit gained over the earlier permitted perimeter arrangement would justify the adverse consequences.

24. National policy places great emphasis on the importance of good design as a key aspect of sustainable development<sup>5</sup>. Of the requirements outlined for successful developments<sup>6</sup>, the most relevant in this instance are that they should add to the overall quality of the area, and maintain a strong sense of place. While appropriate innovation and change, such as increased density, is not to be prevented, developments must be sympathetic to local character and history, including the surrounding built environment. In my assessment, the appeal proposal would provide a design of interest in its own terms, with considerable care taken in its proportions and treatment, but whether due to the desired density or to more formal considerations, one that would not respond well to this outer suburban location, which has an established distinctive character.
25. I conclude on this issue that the appeal proposal would not achieve the aspirations of SLP Policy S35 for a design of exceptional quality and would be contrary to the design objectives of SLP Policy 28.

*Neighbours' living conditions*

26. The proposal seeks to minimise potentially harmful interrelationships with surrounding residential property. The Council accepts that it would be largely successful in this respect. The only outstanding concern relates to a potential loss of privacy in the shared garden to the rear of Beckett House, which adjoins the appeal site on Church Hill Road, due to overlooking from six proposed balconies at first, second and third floor levels.
27. Beckett House consists of ten self-contained flats, laid out over two storeys and attic accommodation. The communal garden space is not very large and reduces to a narrow wedge at the end nearest the appeal site. The three projecting balconies on the proposed eastern block would be close to the common boundary with Beckett House, but set some way forward of its rear wall. Users of the balconies would overlook only a limited portion of the garden. The three inset corner balconies on the other block would overlook a slightly greater area of the garden, but would be considerably further away.
28. The garden is already overlooked by the rear-facing windows and dormers of Beckett House itself, and also by apartment windows to the rear of the recently permitted three-storey extension to 514 London Road, which directly faces the garden at close range. As a result, there is already very little privacy available in the garden. The small amount of additional overlooking provided by the appeal proposal would not cause any further harmful effect.
29. The Council makes no objection on grounds of loss of privacy within Beckett House. A concern raised at the Hearing about potential overlooking of two rooflights could be addressed if necessary by screening of the third floor balcony end, secured by a condition.
30. I conclude on this issue that there would be no conflict with SLP Policy 29, which seeks to protect the amenities of existing occupiers.

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<sup>5</sup> NPPF paragraph 124

<sup>6</sup> NPPF paragraph 127

### *Transport impacts*

31. The proposal is accompanied by a detailed Transport Assessment ('TA') that sets out the proposal's anticipated transport impacts. This shows that the site has a PTAL rating of 3, with a good range of local bus services and access by bus or on foot to rail services. Although the efficiency of some bus services and actual walk times were questioned by some local people at the Hearing, I have no clear justification to doubt the assessed rating or that the site has a moderately good level of accessibility.
32. The officer report on the planning application, informed by a favourable consultation response from the Council's specialist, raised no objection on highways and transportation grounds. It was accepted that the proposal's 50 residents' parking spaces would fall within the maximum allowed by the Council's adopted standards, and that adequate mitigation would be provided by measures including the proposed car club parking space, which would also be available to other local residents, and by support for a Framework Travel Plan to be implemented by a Transport Liaison Group ('TLG').
33. The subsequent reason for refusal refers to a failure to make adequate provision for transport infrastructure, but without specifying the precise shortcoming in this regard. The Council's appeal statement did not entirely clarify matters, but suggested that the issue related to potential future demand for off-site parking and the need to consider a Controlled Parking Zone ('CPZ') that would make provision for local residents. At the Hearing this was crystallized as a request that specific provision should be made through the TLG for a future CPZ if found necessary.
34. I accept the appellant's case that the measures proposed were agreed by the Council and by Transport for London at application stage. The level of parking provision, which is endorsed in the SoCG, was supported by surveys of the area surrounding the site, carried out to an agreed methodology. These did not reveal high levels of parking stress. The funding of the TLG and Travel Plan are now included in the submitted UU. The terms of reference of the TLG would allow for future survey work, leading to a potential move towards implementation of a CPZ if necessary.
35. I conclude on this issue that the appeal proposal would provide a well balanced response to the encouragement of sustainable modes of transport and should not give rise to adverse highways and transport impacts in the surrounding area. The proposal would comply with SLP Policies 36 and 37, which seek adequate mitigation for transport impacts and appropriate levels of parking provision.

### *Affordable housing*

36. Following an independent review of the appellant's viability assessments, the Council accepts that the proposed 13 affordable units (14.7% of the total 88 units) would represent the maximum realistic provision, bringing the proposal into nominally negative viability. I have no reason to take a different view.
37. The only outstanding issue between the parties is the Council's wish for a late stage viability review to be carried out, to ensure that the potential provision has not been enhanced by changing circumstances over the timescale of the development. The submitted UU allows for such a review, and the payment of

any identified surplus, but the appellant continues to dispute the validity of this demand.

38. The proposal would be anticipated to have a construction period of a single phase of less than two years. Having regard to the judgement of the High Court in the case of *McCarthy and Stone*<sup>7</sup>, I accept the appellant's submission that this would not be the type of large-scale phased development for which a late stage review would be required to accord with London Plan Policy 3.12B. The requirement for a late stage review would not be necessary to make the development acceptable. Therefore, that element of the planning obligation would not comply with the tests set by Regulation 122 of the CIL Regulations<sup>8</sup> and no weight could be given to it in support of the approval of planning permission.
39. The UU would be satisfactory in other respects. The appeal proposal would comply with SLP Policy 8, which seeks to maximise provision of affordable housing.

#### *Balance of considerations*

40. The appeal proposal would have a number of interlinked economic, social and environmental benefits. Primarily, it would address the problem of dereliction of a locally prominent site and contribute to the vitality of the District Centre by reintroducing active ground floor frontages opening onto an enhanced public realm, and by providing a good mix of uses. It would add to the supply of housing and would provide valuable affordable housing.
41. However, it would only achieve these benefits at the expense of introducing a new building whose height, mass and form would be inappropriate to its context and which would as a result be harmful to the character and appearance of the area. There is no reason to conclude that similar benefits could not be achieved by a development of more suitable form.
42. The proposal's benefits would not outweigh the conflict with the development plan.

#### **Conclusion**

43. For the reasons set out above, I conclude that the appeal must be dismissed.

*Brendan Lyons*

INSPECTOR

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<sup>7</sup> *R (on the application of McCarthy and Stone Retirement Lifestyles Limited) v The Mayor of London on behalf of the Greater London Authority* [2018] EWHC 1202 (Admin)

<sup>8</sup> The Community Infrastructure Levy Regulations 2010, as amended

## **APPEARANCES**

### FOR THE APPELLANTS:

Mary Cook	Barrister, Town Legal LLP
Paul Rogers	Terence O'Rourke Planning Consultants
Chris Stewart	Collective Architecture
Liz Gibney	Home Group
Will Gardner	Home Group
Russell Henderson	RPS Group
Elizabeth Christie	Town Legal LLP

### FOR THE LOCAL PLANNING AUTHORITY:

Sarah Buxton	Senior Planning Officer
Kelly Sweeney	Deputy Planning Manager
Don Anyiam	Principal Highways Engineer

### INTERESTED PERSONS:

Alan Plant	Chairman, Chapra Residents Association
Bob Sparrow	Chairman, Worcester Park Residents Association
James McDermott-Hill	Councillor, Nonsuch Ward
Tom Drummond	Councillor, Worcester Park Ward
Peter Geiringer	Councillor, Nonsuch Ward
Sue Faulknall	Local resident
Claudia Rayner	Local resident
Keith Brown	Local resident
David Mays	Local resident
Andrew Faulknall	Local resident
Alison MacDonald	Local resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Appellant's proposed conditions on highways matters
- 2 Draft Unilateral Undertaking
- 3 Draft Section 106 Agreement
- 4 Greater London Authority Report on Stage 1 Referral
- 5 Greater London Authority Report on Stage 2 Referral
- 6 Appeal Decision Ref APP/P5870/W/17/3173020
- 7 Policy extracts from Sutton Local Plan 2018
- 8 Photographs of housing development at Ewell Village
- 9 Schedule of proposed conditions

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

- 10 Letter dated 10 July 2018 and copy of executed UU
- 11 E-mail dated 24 August 2018 confirming no comment on NPPF

## **PLANS SUBMITTED AT THE HEARING**

- A Plan (PL)42 Rev B: Flat Type B/b 2B4P
- B Plan (PL)43 Rev B: Flat Type B/c 1B2P
- C Plan (PL)45 Rev B: Flat Type B/e 2B4P