



Appeal Decision

Site visit made on 25 September 2017

by A A Phillips BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 October 2017

Appeal Ref: APP/Z5630/W/17/3173289

39 - 41 Surbiton Road, Kingston-upon-Thames KT1 2HG

- 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 Akash Gupta of Cobalt Narwana Limited against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 16/12377/FUL, dated 18 April 2016, was refused by notice dated 20 October 2016.
 - The development proposed is demolition of the existing buildings and redevelopment of the site providing a mixed retail and office building with 15 residential dwellings above, comprising 9 x 1 bed and 6 x 2 bed units with associated landscaping works, cycle storage and provision of a controlled parking bay and loading bay on Southsea Road.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i. The effect on the character and appearance of the area;
 - ii. The effect on highway safety with particular reference to parking and servicing facilities;
 - iii. Whether the proposal makes adequate provision for affordable housing;
 - iv. Whether the proposal provides a satisfactory mix and density of housing; and
 - v. The effect on the viability of the site and its surroundings for employment purposes.

Reasons

Character and appearance

3. The appeal site comprises two distinctive three storey plus basement end of terrace buildings situated adjacent to the corner of Southsea Road and Surbiton Road. Both buildings are Buildings of Townscape Merit (BTM) along with the adjacent row of properties. The area is mixed in character with a variety of commercial and residential uses near to the site.
4. Policy CS8 of the Core Strategy Adopted April 2012 (the CS) relates to character, design and heritage and states that the Council will protect the

primarily suburban character of the Borough and among other objectives existing buildings of high quality and historic interest will be protected from inappropriate development. Development proposals should recognise distinctive local features. Policy DM 12 relates to heritage assets and states that high quality design will be promoted to preserve or enhance existing heritage assets (including BTMs) and development affecting historic assets will use quality materials and design features which complement the host building or the immediate area. Furthermore, the National Planning Policy Framework (the Framework) recognises that heritage assets are irreplaceable and the effect of a development proposal on the significance of a non-designated heritage asset should be taken into account when determining an application. A balanced judgement will be required having regard to the scale of any loss and the significance of the asset.

5. The appeal site is of townscape, architectural and heritage interest and is a visually prominent imposing and attractive landmark building at the junction of Surbiton Road and Penrhyn Road. The buildings date back to the 1850s and have had various alterations and uses over time. They form part of a larger terrace of BTMs of similar scale. The visual context for the site is Surbiton Road which is a mainly commercial street of various commercial and other uses which contains other groups of BTMs. The street has been altered significantly over time and includes a range of buildings of different ages, designs and materials.
6. The proposal would result in the loss of buildings which are the most architecturally strong and visually significant elements of the prominent and important row of BTMs between 39 and 75 Surbiton Road. Although the buildings are not statutorily listed they make a positive contribution to the historic environment and overall sense of place around Surbiton Road and this is recognised by their designation as BTMs. As such their loss would have a harmful effect on the wider terrace and the setting of the commercial area. Furthermore, as historic buildings within a varied area of development which has failed to conform to the traditional built form over time their loss would be particularly significant and detrimental to the historic and architectural integrity of the Grove character area.
7. I appreciate that the proposal seeks to retain the overall proportions of the site and to continue the street frontage through the proposed arrangement of openings and the use of the materials. I also recognise that efforts have been made to reduce the effect of the proposal on the area by incorporating a third floor set back and lighter structure. However, the loss of the BTMs would be harmful to the group of well preserved and consistent historic buildings in the area within a prominent setting. There would be some economic and social benefits arising from the development, including making a contribution to the overall supply of housing in the Borough; however, in this particular case I do not consider that these benefits would outweigh the harm I have identified arising from the loss of the BTM.
8. Therefore, on this issue I conclude that the proposal would be harmful to the character and appearance of the area and would conflict with policies CS8 and DM12 of the CS.

Highway safety

9. The appeal site is situated within the Kingston Town Centre Controlled Parking Zone (CPZ) and has a public transport accessibility level (PTAL) of 3 which is considered to be moderate. It is my understanding that the Council's Sustainable Transport Supplementary Planning Document (SPD) states that car free developments must be located within CPZs and sufficient distance from any area not covered by a CPZ. The London Plan states that car free development should be promoted in suitably accessible locations. Policy DM9 seeks to ensure that new development does not contribute towards congestion or compromise highway safety and in order to achieve this the Council will ensure that new development should comply with car parking standards and restrict eligibility for on-street parking permits for residents of new developments located in CPZs. According to Policy DM10 of the CS development proposals should have regard to traffic safety and highway conditions.
10. The proposal does not include any on-site parking, although one car parking space would be provided on Southsea Road to the rear of the site. According to the London Plan car parking standards the proposal would have a parking requirement of a maximum of fifteen spaces for the residential units, one of which should be specifically designated for blue badge holders. The Council accepts that development with less than normal parking standards will be acceptable in appropriate circumstances particularly in those areas which have a high PTAL rating. However, this will only be the case where a legal agreement is in place to prevent eligibility for on-street parking permits.
11. Without such an agreement in place the level of car parking would add pressure for on-street residents parking which could potentially lead to unacceptable levels of congestion on the highway in the vicinity of a busy road junction. Therefore, in these circumstances the provision of no parking is acceptable subject to a suitably worded legal agreement.
12. I have noted that a draft legal agreement has been submitted as part of the appeal documentation. However, among other matters it is not dated, signed and witnessed and includes errors, including reference to the incorrect Local Authority in paragraph 2.1.2 to the Schedule. Therefore, in its current state the agreement is incomplete and could not take effect. As such, I afford it little weight in the determination of the current appeal. Planning Practice Guidance advises that a positively worded condition should not be used to require an applicant to enter into a planning obligation and that a negatively worded condition is unlikely to be appropriate in the majority of cases. I do not find that exceptional circumstances have been demonstrated in this particular case.
13. A car parking space and loading bay are proposed for Southsea Road. However, the proposal would conflict with the Council's future plans for Southsea Road. The appeal site is situated adjacent to the planned route for the 'Surbiton to Kingston Go-Cycle' route, part of which involves providing a major new cycle way linking Kingston to Surbiton along Penrhyn Road and Surbiton Road. Consequently, existing residents parking bays on Penrhyn Road would be re-provided along Southsea Road in the vicinity of the appeal site.
14. I understand that the Council's reason for refusal relating to servicing arrangements may contradict pre-application advice provided in October 2014; however, the circumstances have clearly materially changed and therefore the

pre-application advice has limited weight in determining the current case. I find no evidence that the appellant has provided suitable alternative arrangements for servicing the proposed development. I have also noted that the appellant contends that most deliveries would take place at night when vehicles may use parking spaces along Penrhyn Road and Southsea Road or use an existing loading bay on Surbiton Road which would be likely to cause noise and disturbance to the detriment of the living conditions of local residents. I observed at my site visit that there is a range of parking restrictions in the vicinity of the appeal site and that at certain times of the day there may be no particular restrictions to servicing vehicles. Nonetheless, I consider that safe and convenient servicing arrangements are important in order to ensure the highway is not obstructed at certain times of the day around the busy junction.

15. The appellant has suggested that a condition could be used to ensure adequate servicing arrangements are agreed with the local planning authority. However, given the prevailing road conditions, the restrictive nature of the highway and parking opportunities near to the entrance to the commercial unit, the Council's concerns regarding obstructions to the proposed cycle route and the lack of viable alternative arrangements I conclude that in the event of allowing this appeal and granting permission a condition would be unsuitable in this particular case.
16. Consequently, the proposal would fail to provide adequate servicing facilities for the retail and commercial unit. On this issue I therefore conclude that the proposal would have a harmful effect on highway safety with particular reference to parking and servicing facilities. As such it would conflict with Policies DM9 and DM10 of the CS and Policy 6.13 of the London Plan.

Affordable housing

17. Policy CS10 of the CS seeks to maximise the delivery of affordable housing and Policy DM15 of the CS seeks 50 per cent affordable housing on sites with a capacity of ten or more dwellings, as is the case with the current appeal proposal. Such on-site affordable housing should be provided unless it can be demonstrated that such provision would make a scheme unviable or impractical. Alternative provision will be required in such circumstances.
18. In this particular case a full viability assessment has been submitted in support of the proposal which concludes that the scheme cannot reasonably support any affordable housing either on site or through Section 106 financial contributions. Such provision would make the scheme unviable. However, an independent review of the appraisal shows that there is sufficient surplus in the scheme to provide seven units on site and remain viable. It appears to me that the key variable at dispute in assessing this matter is the level of developer's profit which the appellant's appraisal has set at 20 per cent. The appellant contends that the industry standard appropriate return is considered to be around 20 per cent and considers the appraisal to be robust and accurate and that the profit margin is acceptable.
19. However, the Council's Financial Viability in Planning Supplementary Planning Document November 2016 states that in line with the Framework and Planning Policy Guidance developer profit will significantly vary between projects to reflect the size and risk of the development. A rigid approach to assumed profit levels will be avoided; however, the Council will require supporting

evidence to justify proposed rates of profit taking account of the specific circumstances of the proposal among other factors. In this respect I consider the Council's position to be entirely reasonable given the development plan objective of delivering affordable housing.

20. In this case I do not consider that a robust justification for the 20 per cent profit level has been provided and consequently the appellant has not demonstrated satisfactorily that the proposal has provided the maximum amount of affordable housing that can reasonably be provided from the proposal before me. As such I conclude on this issue that the proposal does not make adequate provision for affordable housing and conflicts with Policy 3.12 of the London Plan, Policy DM15 of the CS and the Council's Planning Obligations Strategy Revised Supplementary Planning Document September 2011.

Housing mix and density

21. Policy 3.8(a) of the London Plan requires new development to offer a range of housing choices in terms of the mix of sizes and types. Policy DM13 of the CS requires new development to provide a minimum of 30 per cent of dwellings as three or more bedrooms unless it can be robustly demonstrated that this would either be unsuitable or unviable.
22. The Strategic Housing Market Assessment for Kingston-upon-Thames and North East Surrey Authorities June 2016 (the SHMA) identifies that there is a significant requirement for family housing. The future projected dwelling requirement for Kingston shows a reduction in the requirement for small units in 2035 and a significant increase in the proportion of larger units required to meet the objectively assessed need.
23. The current proposal would provide no three bedroom family units for which there is a clear evidenced need in the Borough. Consequently, it fails to provide a suitable mix of larger units in a locality which I consider to be suitable for family dwellings.
24. Furthermore, the proposed configuration of the proposal would result in an over-dense form of development taking account of Policy 3.4 of the London Plan which, for a site with a PTAL rating of 3 in an urban location is between 200 to 450 habitable rooms per hectare. I disagree with the appellant's contention that the site is within a Central London location where density would be greater. Therefore, the proposed density exceeding 600 habitable rooms per hectare is significantly above the development plan's adopted guidelines. Furthermore, the Borough's Character Study places the site within Zone 11 – Grove where the average density is approximately 63 dwellings per hectare.
25. Therefore, on this issue I conclude that the proposal would not provide a satisfactory mix and density of housing and would conflict with Policies CS10 and DM10 of the CS and Policy 3.8 of the London Plan.

Employment viability

26. At my site visit I observed that No 39 is currently being used for employment purposes as offices and storage. However, I was unable to gain access to No 41 and cannot confirm its current use. It is my understanding that under reference 13/1280 the Council deemed that prior approval was not required for the conversion of office space at the appeal site to form five residential flats.

Although the appellant has stated that No 41 has now been converted to residential use I have been unable to confirm this is the case due to a lack of access. I have no confirmation that the conversion of No 41 has taken place under the prior approval and there is no evidence that the change of use has occurred in accordance with any approved scheme. Furthermore, I have no evidence through a certificate of lawfulness that the conversion for employment to residential use would meet all of the requirements of Class O, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. As such this fall-back position has little weight in the overall planning balance.

27. Nonetheless, Policy DM17 of the CS seeks to protect existing employment land and premises. Non-employment or mixed use schemes will not be acceptable unless specific tests are satisfied, including it has been demonstrated by sound evidence and rigorous marketing over a number of years that there is no qualitative or quantitative need for a range of employment uses. Furthermore, mixed use schemes should not result in a net loss of employment capacity and should not compromise the viability of the site and its surroundings for employment purposes.
28. The Economic Analysis Study by Nathaniel Lichfield and Partners May 2014 shows that there is an ongoing quantitative need for employment space up to 2031. Consequently, the loss of employment space would conflict with the Council's aims to promote the development of a diverse economy by ensuring that a wide range of land and premises are available for employment purposes. Furthermore, other than pursuing the argument that the property could be converted into residential uses without permission the appellant has not demonstrated why the site could not be developed for employment purposes. There is no evidence that the site has been suitably marketed for employment purposes over a period of time and no reasons why the site could not be developed for employment uses.
29. Therefore, on this issue I conclude that the proposal would have a harmful effect on the viability of the site and its surroundings for employment purposes which would conflict with Policy DM17 of the CS.

Conclusion

30. For the reasons given above and taking into account other matters raised I conclude that the proposal conflicts with the development plan taken as a whole and that the appeal should be dismissed.

Alastair Phillips

INSPECTOR