



Appeal Decision

Site visit made on 18 February 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2019

Appeal Ref: APP/T5720/W/18/3200952

227 Western Road, Colliers Wood, London SW19 2QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mesari Ventures Ltd. against the Council of the London Borough of Merton.
 - The application Ref 17/P3037 is dated 7 August 2017.
 - The development proposed is described on the application form as the 'demolition of existing building & redevelopment of site for commercial use at ground floor & residential use over 6 floors (7 x 1-bed; 6 x 2-bed & 5 x 3-bed flats) & communal space at 7th floor, together with associated landscaping and cycle parking'.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary matters

2. The appeal is against the Council's failure to determine application Ref 17/P3037 within the relevant statutory period. However the Council have set out at appeal that, had they been in a position to do so, they would have refused permission for the development proposed. Notwithstanding the planning history to the site,¹ each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. The development plan includes policies of the London Plan ('LP'), Merton Core Strategy ('CS'), and the Council's Sites and Policies Plan ('SPP').²
3. I have taken account of various other material considerations, including the National Planning Policy Framework ('NPPF'),³ the Planning Practice Guidance ('PPG'), the Council's Development Viability Supplementary Planning Document ('SPD'),⁴ the 2017 Affordable Housing and Viability Supplementary Planning Guidance ('SPG') produced by the Greater London Authority ('GLA'), and the Council's 2010 Tall Buildings Background Paper ('TBBP'). In so far as necessary and relevant to this case, there has been appropriate opportunity for comment on that planning context.

¹ Notably pre-application advice Ref 17/P0857 and a successful appeal for a three storey building in 1994 related to application Ref 93/P1208. PPG Reference ID: 20-011-20140306 nevertheless sets out that pre-application advice is not binding, notwithstanding the appellant's concerns regarding the Council's assessment of the scheme at that stage relative to their position at appeal.

² Adopted in March 2016, July 2011, and July 2014 respectively.

³ Published 24 July 2018, updated 19 February 2019.

⁴ Adopted 23 May 2018.

4. There are revised plans before me with the suffix 'rev H'. They show a substantially different scheme to that originally proposed; five instead of six levels of residential accommodation above a commercial ground floor. The design of the building also differs. The 'rev H' set of plans are not consistent with the description of the scheme development in the application form and its assessment in supporting evidence, including in the Design and Access Statement. Accordingly, and in the interests of procedural fairness, I have not determined the appeal with reference to those plans (other than in so far as they are illustrative of a potential alternative scheme).

Main issues

5. Given the context above, and based on all that I have read and seen, the main issues are:
 - i. the effect of the proposal on the character and appearance of the area,
 - ii. whether or not the scheme would provide acceptable living conditions for future occupants,
 - iii. the effect of the proposal on the efficient operation of the surrounding highway network,
 - iv. whether or not appropriate provision is made for affordable housing, and
 - v. whether or not appropriate provision is made for carbon dioxide reduction associated with the development proposed.

Reasons

6. The appeal site is an irregular parcel of land of approximately 215 square metres.⁵ It is occupied by hardstanding and a modest two storey building. That building has consent to be occupied as a single dwelling as opposed to the previous use of the ground floor as office space.⁶ There is a petrol station to the north. Otherwise the site abuts the pavement curving around the junctions of Church Road and Western Road, both elements of the A236, and a spur of Western Road which provides access to an industrial estate (identified via LP policy 2.17 as a Strategic Industrial Location, 'SIL').
7. There are a mix of commercial uses towards the north and east. Colliers Wood Town Centre, a District Centre in the LP hierarchy, extends to Nos 118-120 Christchurch Road/ Church Road and Prince George's Road adjacent to the petrol station. Colliers Wood underground station is some 600 metres away, and this location has a PTAL rating of three. To the south and west, towards Mitcham and the River Wandle respectively, for some distance the surrounding area is predominantly characterised by suburban residential properties.⁷
8. The proposal is to demolish the existing property and to erect in its place a building arranged over eight levels that would effectively occupy the entirety of the site. The ground floor would comprise mixed commercial space; the application form stating that would increase gross internal floorspace from 86 square metres ('sqm') to 142 sqm. I note that is inconsistent with the appellant's Viability Assessment in respect of the extant use of the property.⁸ Eighteen apartments of varying sizes would be provided in the first through

⁵ As stated in the application form. An alternative 306.8 sqm figure is also given on certain plans.

⁶ Permission Ref 16/P3746.

⁷ As is referenced in paragraph 8.3 of the appellant's Design and Access Statement.

⁸ Prepared by BNP Paribas Real Estate, dated June 2017, paragraph 3.1.

sixth floors based on a broadly standardised floorplan for each level, with communal space above.

Character and appearance

9. In summary and amongst other things, LP policies 7.4 and 7.6, CS policy CS 14, and SPP policies DM D1 and DM D2 seek to ensure that development integrates suitably with local character. Those are aims common to paragraph 127 of the NPPF. The PPG emphasises that careful consideration should be given to the size of individual buildings and how that would relate to their surroundings.⁹
10. I acknowledge that the NPPF, and policy H1 of the emerging London Plan at examination, in general terms encourage optimising the use of brownfield land such as the appeal site, and smaller sites also. Innovative and 'landmark' development can add to the variety and liveliness of urban architecture. In that respect there is logic to the appellant's argument that at present the appeal site is under-utilised.
11. LP policy 7.7 applied via CS policy CS 14 accords supports, in-principle, to 'tall buildings' in the Borough's town centres of Colliers Wood, Morden and Wimbledon. As the proposed building has been designed as a focal point relative to the prevailing height and scale of properties nearby, it is reasonable to describe it as such. By contrast, outside of town centres CS policy CS 14 seeks to protect 'the distinctive suburban character of the Borough'.
12. The appeal site is in a location with a variety of uses and building designs. There are also some substantial buildings nearby: at the corner of Christchurch Road and Prince George's Road there is a building arranged over between 5 and 12 floors of broadly comparable aesthetic,¹⁰ and the Brown & Root Building, which I understand is of some 18 storeys, is also visible towards the north. A substantial building here would therefore not be wholly exceptional. Given its separation from neighbouring uses, and falling northwards of the nearest residential properties along Western Road, with regard to the appellant's solar and daylight analyses the proposal would not in my view result in undue effects to the occupants or users of nearby properties.
13. However the appeal site is outside of the established boundary for Colliers Wood Town Centre. It is physically and visually separated from it, and from other tall buildings, by intervening roads, by the adjacent petrol station, and by some distance. The petrol station is relatively modest in scale, and I am told that there is no present intention to redevelop it.
14. Church Road adjacent to the appeal site, and Western Road running eastwards from it are primarily characterised by two and three storey terraced properties (or lead to residential streets with a similar form of development). Whilst the neighbouring industrial estate is an exception, buildings there are nonetheless relatively low lying as is typical of commercial buildings where floorspace is of greater utility than height. The extent of that prevailing 'suburban low rise' character is clearly illustrated in TBBP figure 56.

⁹ Reference ID: 26-026-20140306.

¹⁰ Ostensible numbers 114 to 120 Christchurch Road and 3 to 5 Prince George's Road, albeit that this area appears to have been redeveloped collectively.

15. Being substantial in height, the proposed building would punctuate what is otherwise a broadly harmonious scale of development in the immediate vicinity. That would appear jarring. The imposing height of the proposal would be exacerbated by its occupying the majority of the plot, its elevations proposed to be hard up against a relatively narrow stretch of pavement. That is in contrast to the building at the corner of Christchurch Road and Prince George's Road. That building is more substantially set back from the highway by a wide pavement which is more characteristic of an urban centre. Particularly when viewed from close-by, the scale and form of the building would be perceived as excessively dominant.
16. I accept that the northern elevation of the building has been designed so as to accommodate potential redevelopment of the petrol station in time. As such it is a relatively blank façade, notwithstanding that could be softened to some extent by installing a green wall or by other means. However that elevation combined with the confines of the site curving around the highway network in my view results in an awkward semi-circular form to the building, exacerbating its separation in visual form from the Town Centre rather than representing a complementary addition to the built environment.
17. For the above reasons, I conclude that the proposal would have a significant adverse effect on the character and appearance of the area, in conflict with LP policies 7.4, 7.6 and 7.7, CS policy CS 14, SPP policies DM D1 and DM D2, and with relevant elements of the NPPF cited above.

Living conditions

18. Each of the 18 units proposed would meet or exceed internal space standards set out via LP policy 3.5 and the Technical housing standards of March 2015. Each would also have some external balcony space, typically between 5 and 9 square metres, in addition to communal provision.¹¹ In those respects the proposal would not be unacceptable, albeit that the nature of the development would not reflect the prevailing spaciousness of the area as described above.
19. However a third of the proposed flats would be single aspect, with windows only facing broadly southwards. As set out below, that is directly towards a relatively intensively used element of the highway network. Standard 29 of the GLA's Housing Supplementary Planning Guidance of March 2016, whilst not part of the development plan, seeks to 'minimise the number of single aspect dwellings'. That is because of the benefits of dual aspect properties for natural ventilation minimising overheating, mitigating against pollution, and providing for appropriate levels of outlook. On a plain reading that phrase stands alone from the second sentence of standard 29 setting out further criteria for where single aspect dwellings should be avoided.
20. The substantial brickwork 'grid' design of the proposal would, moreover, impede certain views from within the proposed units and their balconies. That would limit outlook, and to some degree the extent of natural light reaching living areas. In my view, that would be particularly the case when considered in

¹¹ Council statement of case, paragraph 7.5.1, figures not disputed by the appellant. Notwithstanding its practical usability, on account of likely occupants, children's play provision would not be required (with reference to the GLA's Play and Informal Recreation Supplementary Planning Guidance of September 2012).

combination with the single aspect of the middle units proposed. In those respects the living conditions of future occupants would be unduly qualified.

21. Individuals make an informed choice as to their accommodation. Some may accept such qualified living conditions as the corollary of proximity to a District Centre. Nevertheless it is the function of planning to ensure all development is appropriate. I also acknowledge that the design of the proposal has emerged from the appellant seeking to optimise, or maximise, the use of the site. That, however, is a false premise. Qualified living conditions would result from the density of development proposed, which is not supported here by policy or appropriate with regard to surrounding character.
22. Moreover whilst SPP policy DM D2 and CS policy CS 14 call for appropriate and adequate living conditions, NPPF paragraph 127 and LP policy 7.6 are explicit in seeking 'high standards of amenity' and development of the 'highest architectural quality'. The development would fall short in that regard, and would fail to provide acceptable living conditions for all future occupants.

Highway network

23. Aside from the potential provision of a disabled parking bay, the scheme would have no direct effect on street geometry. Nevertheless the appeal site is located at an intensively used juncture of the highway network. The A236 represents a central link between Colliers Wood, Mitcham and Croydon beyond. The junction of Church Road and Western Road is, in that context, relatively constrained in width and alignment.
24. There was a significant volume of traffic here at the time of my mid-afternoon site visit. During that time several larger goods vehicles mounted the kerb, or obstructed traffic, in order to make the sharp turn around No 221 Western Road opposite the site. I also saw several vehicles parked haphazardly outside of defined spaces nearby. Given the layout of the area, its location, and with regard to the evidence before me, there is nothing to indicate that those observations are necessarily atypical of prevailing conditions.¹²
25. As set out in the supporting Transport Statement,¹³ the appellant avers that the scheme may reasonably be deemed 'car free'. However, as set out above, the appeal site is physically separated from the limits of the District Centre and has a PTAL accessibility rating of 3, being 'moderate'. Notwithstanding the approach in the emerging London Plan,¹⁴ neither CS policy CS 20 nor SPP policy DM T3 specifically support permit-free schemes in such locations. Moreover the appeal site and its immediate surroundings are not within a Controlled Parking Zone, and therefore there would be no practical mechanism of securing the development as such.
26. Based on 56% of occupants of the proposed dwellings owning vehicles, which I accept is relatively generous given the location of the appeal site and measures that could be taken to encourage alternative means of transport, the Transport Assessment shows that trip-generation resulting from the scheme would be

¹² Reasoning which reinforces my finding in respect of ensuring suitable living conditions for this particular location, particularly in respect of single-aspect units.

¹³ Prepared by Crosby Transport Planning, dated June 2017, paragraphs 1.3 and 4.4.

¹⁴ At examination, and not yet at such an advanced stage of preparation that it may be accorded substantial weight.

fractional compared to the heavily-trafficked character of the highway network here. Nevertheless the Transport Assessment indicates, on that premise, that the development would result in the percentage of nearby parking space use rising from 74.7% to 83.0%. At appeal the appellant has indicated that the difference may instead be as high as between 79.6% and 88.5%. That is because at the time of the original surveys some parking suspensions were in place related to the residential redevelopment of a site close by.

27. I am told that 90% parking space occupation is a rule-of-thumb figure for provision being adequate relative to demand, established via practice rather than policy. The 88.5% rate forecast to result from the scheme under certain assumptions comes close to that figure. In practice that would mean that slightly in excess of 1 in 10 parking spaces in the area are likely to be available at a given time.
28. In my view that would result in some inconvenience to residents in finding a reasonably conveniently located space. The revised figures referenced at appeal also attest to changes that have occurred since June 2017, which along with my observations of parking pressures here, indicates that circumstances may have changed since the surveys undertaken in support of the Transport Statement.¹⁵
29. I am therefore not satisfied on the basis of the evidence before me that the parking pressures that would result from the development proposed could be satisfactorily accommodated. The consequence would either be inconvenience to residents, or liability for additional informal opportunistic parking. Both may adversely affect the free flow of traffic, either through generating additional vehicle manoeuvring around a constrained element of the highway network, or directly by limiting the space available to motorists or by impeding sightlines.
30. Moreover 17 new dwellings will inevitably generate a range of vehicular movements associated with visitors, deliveries and servicing. Given the confines of the site and its surroundings, those are similarly likely to obstruct the free flow of traffic on occasion. Not all such could feasibly be confined to prescribed times to avoid conflict with peak traffic flows or movements associated with other uses nearby.
31. Given my reasoning above regarding the location of the appeal site and its surroundings, and with regard to CS policy CS 20 and policy CS 8 regarding housing choice, it is appropriate to require disabled parking provision. The appellant has, moreover, set out their willingness to fund the implementation of such. A disabled bay is therefore proposed to be located along the spur of Western Road which provides for access to the SIL.
32. I accept that smaller vehicles could pass the bay when it is occupied in order to access the industrial estate. The SIL is alternatively accessible via Prince George's Road. However certain larger vehicles would be unlikely to be able to pass the bay when occupied,¹⁶ not all of those seeking to access or exit from the SIL would necessarily be aware of an alternative access (which is, in any

¹⁵ There is insufficient information before me as to the planning circumstances, transport measures, and nature of parking provision in relation to other development nearby referenced in that document to enable direct comparison with the scheme before me.

¹⁶ As shown in the Council's tracking diagram, figure 11 to their statement of case.

event, a more circuitous route in relation to Western Road). Given my observations regarding the nature of the highway network here, even occasional disruption by consequence of the location of the disabled parking bay would impede the efficient operation of the highway network.

33. For the above reasons I conclude that the proposal would have an adverse effect on the efficient operation of the highway network in conflict with the relevant provisions of CS policy CS 20, SPP policy DM T3 and relevant elements of NPPF paragraphs 108 and 110, which in summary seek to ensure that the effects of all development on the transport network are acceptable, and that the needs of people with disabilities are suitably addressed.
34. NPPF paragraph 109 sets out that development should only be prevented on transport grounds if the residual cumulative impacts on the road network are severe. Nevertheless it is legitimate to weigh any adverse impacts on the highway network in the balance of determining whether a scheme should be allowed (where such effects are not the sole matter on which the appropriateness of development turns).

Affordable housing

35. There is no dispute between the main parties that the scheme is unviable. The appellant's Economic Viability Assessment puts the deficit at approximately £1.91 million, the Council's at around £1.15 million.¹⁷ On that basis no affordable housing provision, or contribution towards provision, is proposed with regard to the provisions of CS policy CS 8, which sets a Borough-wide affordable housing target of 40% of all new dwellings (albeit with room for variation on account of viability).
36. Policy CS 8 operates similarly to LP policy 3.12, which seeks to achieve the maximum reasonable amount of affordable housing provision. That policy is supplemented by the 2017 Affordable Housing and Viability SPG, and in so far as relevant to this appeal is aligned with the approach in NPPF paragraph 61, i.e. seeking to meet the housing needs of all elements of the community. The appellant contends that the absence of a planning obligation with some form of viability reappraisal mechanism does not mean that the proposal would be in conflict with that policy context. I disagree.
37. No contribution towards affordable housing provision relative to an established development plan benchmark of 40% is significant, particularly when set against a backdrop of pressing needs for such in London and Merton. There is no substantive evidence to indicate that affordability pressures have eased since the adoption of the LP or CS, or of circumstances particular to this scheme of such significance so as to undermine strategic viability work undertaken at that time.
38. Moreover paragraph 3.54 of the SPG, whilst guidance, sets out clearly that in order to maximise affordable housing delivery review and reappraisal mechanisms are supported. Further detail in respect of how review mechanisms can be effected in practice is also set out in the Council's Development Viability SPD. The approach in the SPG and SPD is consistent with the advice in the PPG, namely that at a plan-making level, viability review

¹⁷ Prepared by BNP Paribas Real Estate dated June 2017, and by the Valuation Office Agency dated February 2018.

mechanisms should be set out specifically in order to secure 'optimal public benefits through economic cycles'.¹⁸

39. In that context, notwithstanding forecast viability, the absence of a mechanism for review or reappraisal means that the scheme presently fails to make appropriate provision for contributing towards affordable housing delivery relative to needs. That is in conflict with the relevant provisions of CS policy CS 8 and LP policy 3.12 as applied via the SPG and SPD, and with regard to relevant elements of the NPPF. There is no recourse for me to remedy that.¹⁹

Carbon dioxide reduction

40. Table 7 of the appellant's Sustainable Design and Construction Statement ('SDCS'),²⁰ sets out that the domestic elements of the development, subject to adherence to the specifications used in that document, should achieve around a 36% reduction in CO₂ emissions relative to the Building Regulations, Part L, as amended. The Council explain how that accords with the minimum requirements of LP policy 5.2 and CS policy CS 15, which seek to ensure that development makes the fullest contribution to minimising carbon dioxide emissions (albeit that an annual shortfall towards achieving zero carbon standard of 14.31 tonnes would persist).
41. SDCS table 9 shows, subject to the same caveat as above, that around a 29.6% reduction in CO₂ emissions relative to Part L would be achieved for the non-domestic ground floor elements of the scheme. That would be short of policy requirements. The appellant does not dispute those figures, nor that, based on paragraphs 2.5.7 to 2.5.12 of the GLA's 2014 Sustainability Design and Construction SPG in particular, a carbon off-set figure of £26,370 to mitigate the proposal's effects is generated. However the appellant and Council agree that there may be the opportunity to identify and implement additional carbon abatement measures in practice, thereby reducing the extent of any offsetting required.
42. Consequently, in my view, securing necessary CO₂ reductions could be achieved by way of an appropriately worded condition requiring compliance with an agreed scheme were the proposal otherwise acceptable. That need not necessarily be reliant upon the offsetting sum above, or other financial contribution. However that the proposal could be made acceptable in respect of LP policy 5.2 and CS policy CS 15 is neutral in the planning balance. That would ensure policy compliance, rather than weighing positively in favour of granting consent.

Other matters

43. The proposal would have certain benefits. It would enable the provision of new homes and commercial floorspace, support employment during construction, and future occupants would bring trade to, and therefore support the vitality of Colliers Wood. However the benefits would be modest, particularly of 17 new dwellings relative to an annual minimum development plan target for the Borough of 411. Whilst I accept that policy H1 of the emerging London Plan

¹⁸ Reference ID: 10-009-20180724.

¹⁹ With regard to PPG reference ID: 21a-012-20140306.

²⁰ Prepared by eb7 Ltd., dated 17 May 2017.

proposes a significant uplift to that figure over the next decade, as set out above that is not yet fixed.

44. I also acknowledge that policy H1, and NPPF paragraphs 65 and 118, support the redevelopment of brownfield and smaller sites. However that support is qualified; such land must be suitable for the development proposed. Neither the support in the development plan nor NPPF for the provision of new housing is at the expense of ensuring that all development integrates appropriately with its surrounding context, which is not the case here.
45. The essence of the inspector's reasoning in appeal Ref APP/C1760/W/17/3179932, brought to my attention by the appellant, is that planning policy is not designed so as to cap housing provision (even where a five year land supply can be demonstrated). I broadly agree with that premise, albeit that each proposal must be determined on its merits with regard to the precise wording of the development plan and its justification. That is notwithstanding that there is nothing before me to counter the Council's position that they are presently able to demonstrate a five year land supply (with reference to NPPF paragraphs 67, 73 and 11).
46. However in this instance what is critical is that the proposal would result in significant adverse effects, as reasoned in main issues 1 to 4, not that the proposal would exceed that which is strictly necessary to meet development plan requirements. Moreover in appeal Ref APP/C1760/W/17/3179932 the inspector accorded particular importance to the benefits of that scheme providing 40% affordable housing provision in compliance with applicable policy. Direct comparisons cannot be drawn between that scheme, for 21 dwellings at approximately 15 dwellings per hectare in a rural location, and the scheme before me.
47. As such, having taken account of all other relevant matters, the significant adverse effects of the proposal would in my view clearly outweigh the limited benefits that would result. Consequently no other material considerations individually or collectively are sufficient to justify allowing the appeal.

Conclusion

48. For the above reasons, having considered the development plan as a whole, the approach in the NPPF, and any other relevant considerations, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR