



Appeal Decision

Site visit made on 13 December 2022

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 MARCH 2023

Appeal Ref: APP/Z3635/W/22/3291661

Phase 1C Charter Square, High Street, Staines-Upon-Thames, TW18 4BY

- 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 London Square Developments Ltd against the decision of Spelthorne Borough Council.
 - The application Ref 20/01112/FUL, dated 16 September 2020, was refused by notice dated 30 July 2021.
 - The development proposed is the redevelopment of the site to provide 66 new residential units (Use Class C3) with flexible commercial, business and service floorspace (Use Class E) and drinking establishment floorspace (Sui Generis) at ground floor, rooftop amenity space; landscaping and enhancements to the central public square, associated highway works, and other ancillary and enabling works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form and refers to 66 units. However, the appellant at Part E of the appeal form, refers to an alternative description of the development with a reduced number of units (64) following negotiations with the Council. Notwithstanding the description of development from the application form set out above, it is clear from the plans and accompanying details that the development comprises 64 units. The Council dealt with the proposal on this basis, and so shall I.
3. The Council has submitted the Pre-Submission Spelthorne Local Plan: 2022 – 2037 for examination to the Secretary of State, as of December 2022. I have little information to suggest when the plan is likely to be adopted, or if any policies have been modified, or if there are any unresolved objections. Accordingly, I attribute limited weight to this plan.

Main Issues

4. The main issues are:

- Whether the proposal would provide appropriate levels of affordable housing;
- The effects of the proposed development on the living conditions of the neighbouring residents with particular regard to daylight and sunlight and outlook; and
- Whether there is appropriate provision for parking for the proposed development.

Reasons

Affordable housing

5. The Council have indicated that at present they cannot demonstrate a 5-year supply of deliverable housing sites with a 4.8 year supply. The under provision of housing is also reflected in affordable homes and in particular affordable rented units. Policy HO3 of the Spelthorne Borough Council Core Strategy and Policies Development Plan Document, adopted February 2009 (SCS) requires that having regard to the circumstances of each site, a proportion of up to 50% of housing on sites should be negotiated to be affordable housing where the development comprises 15 or more dwellings as is the case here.
6. The appellant has indicated that 100% of the proposed dwellings be affordable, with 6 units provided as affordable rent products and the remaining 58 units provided as shared ownership, which would be secured by a legal agreement in the form of a Unilateral Undertaking (UU). However, the Council raise concerns that not all of the landowners are party to the UU and suggests a condition to deal with the issues raised.
7. I have had regard to the advice in the Planning Practice Guidance on this¹. It confirms that ensuring a planning obligation, or other agreement, is entered into prior to granting planning permission, is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation, or other agreement, in a timely manner and is important in the interests of maintaining transparency. It goes on to state that in exceptional circumstances, a negatively worded condition requiring a planning obligation, or other agreement, can be entered into before certain development can commence, may be appropriate, in the case of more complex and strategically important developments, where there is clear evidence that the delivery of the proposal would otherwise be at serious risk.
8. The UU contains a requirement to ensure that the works on land not controlled by the appellant, and to be authorised by other parties are to be bound into a further agreement to the satisfaction of the Council. However, the wording of this clause is not a planning obligation in terms of section 106(1) of the Town and Country Planning Act 1990. Whilst it may have some practical value as a 'personal' covenant by the Owner, it would not run with the land and bind their successors. In practice therefore, the affordable housing requirement only binds the Owner's land which forms the minority of the site.

¹ PPG Paragraph 009 Reference ID: 21a-010-20140306 and Paragraph: 010 Reference ID: 21a-010-20190723

9. The appellant refers to a judgement in which it was held that there was no requirement that a section 106 agreement (s106) had to bind all interests in a proposed development site². However, that site related to payments of contributions as mitigation which would be secured whether the area of land in other ownership was bound by the s106 agreement or not. This case is different in that the UU seeks to secure the delivery of affordable housing on land, the owners of which are not bound by the appropriate legal agreement.
10. I have considered whether the affordable housing could appropriately be delivered by condition. However, in my view, there is no substantive evidence of any exceptional circumstances, such as the proposal being of strategic importance. Furthermore, in order for affordable housing to be provided effectively, arrangements must be made to transfer it to an affordable housing provider, to ensure that appropriate occupancy criteria are defined and enforced, and to ensure that it remains affordable to first and subsequent occupiers. A planning obligation (either a s106 agreement or UU), rather than condition, provides the legal certainty of ensuring that these arrangements are effective.
11. For the reasons above, I cannot be certain that the proposal would deliver an appropriate level of affordable housing. It would therefore be in conflict with Policy HO3 of the SCS and Chapter 5 of the National Planning Policy Framework (the Framework) which amongst other things, requires identified affordable housing need to be met on site where appropriate.

Living conditions of neighbouring residents

12. The appeal site is located close to Staines town centre and is bounded by High Street to the south, a railway line to the west and Mill Mead to the east. The site forms the third phase (1C) of an existing town centre development known as Charter Square, with Phases 1A and 1B already complete. The appeal site is located in the southwest corner of Charter Square and consists of an L-shaped building wrapping around a courtyard between the existing developments. Currently this part of the site is occupied by a small group of two storey properties at Nos 116, 118 and 120 High Street and a temporary sales suite.
13. The appeal proposal consists of the demolition of the existing two-storey units and redevelopment of a contemporary part 6, part 7 and part 9 storey block containing 64 affordable units with commercial premises located at the ground floor. The existing developments at Phases 1A and 1B are designed in a similar layout, albeit with a smaller courtyard area.
14. With regard to daylight and sunlight for the existing residents, the Council highlight that several existing dwellings within Phases 1A and 1B have reduced daylight to their main living areas below British Research Establishment (BRE) targets. They also indicate that some of the existing dwellings have degraded sunlight in their living rooms below BRE targets.
15. The appellant has submitted a revised daylight and sunlight assessment, as part of the appeal, which includes further clarification of the original daylight and sunlight study of the proposal.
16. For daylight, the assessment demonstrates that 39 habitable rooms within Phases 1A and 1B would not achieve the 1.5% Average Daylight Factor (ADF)

² R (McLaren) v Woking [2021] EWHC 698

to habitable rooms as stated within the established BRE Guidance as a result of the proposal. In terms of the units that do not achieve this figure, the ADF figures range between 0.5% - 1.4%. With regard to sunlight 35 existing habitable rooms would not achieve the target of 25% for Annual Probable Sunlight Hours (APSH) as recommended by the BRE Guidance. Here, the deficiencies in APSH range between 4% - 11%.

17. When taken holistically across the development, the majority of existing dwellings (90%) would meet BRE recommendations or experience no noticeable alteration in their current daylight levels as a result of the appeal scheme. Furthermore, in terms of sunlight, while there would be isolated reductions in sunlight to 35 existing habitable rooms as a result of the proposal, these would be mainly experienced within bedrooms where the BRE guidance advises that required levels of sunlight can be more modest than living room areas, although care should be taken not to block too much sun.
18. Despite being a marginal shortfall, nevertheless a small percentage of the existing dwellings would experience a loss of daylight and/or sunlight against the BRE Guidance. This is not in dispute. Given this shortfall, this would harm living conditions of existing residents. Thus, it remains that there would be some conflict with the provisions of Policy EN1 b) of the SCS which among other things seeks new development to avoid harmful impact on adjoining properties in terms of daylight and sunlight.
19. SCS Policy EN1 b) is broadly consistent with Paragraph 130 f) of the Framework in that it relates, amongst other things, to creating places with a high standard of amenity for existing users. Policy EN1 b) is also broadly consistent with Paragraph 125 c) in ensuring that developments make optimal use of the potential of each site, referring to a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site, it is provided the resulting scheme would provide acceptable living standards. I will return to consider this conflict in the planning balance section below.
20. The appeal site is located within a sustainable town centre location adjoining the existing contemporary flatted developments, with a high density reflective of the town centre location and modern living arrangements. At the ground floor, the proposal would provide a distance of approximately 32.5 metres (m) from the western flank of Phase 1A and approximately 31.7m from the south elevation of the dwellings located in 1B. These distances are in excess of the appropriate distances between dwellings as stated in the Spelthorne Borough Council Design of Residential Extensions and New Residential Development Supplementary Planning Document, adopted April 2011 (RSPD), which highlights that an appropriate degree of separation must exist between properties to avoid overlooking, preserve privacy and outlook and avoid an overbearing impact.
21. However, at the upper floor level the Council are concerned with the relative distances being considerably closer, with particular regard to the east flank elevation of the proposal adjacent to the western flank of Phase 1A, and the north elevation of the appeal site with the south elevation of Phase 1B. Both elevations are approximately 17m away from one another, thus not meeting the required standards. However, the distances between the existing developments at 1A and 1B are also shorter at upper floor levels

(approximately 12m) than that of the proposal. As such, given the similarities between the approved and proposed arrangements which have previously been found as acceptable, the distances of 17m in this case would be appropriate.

22. From my site observations there is a prevalence of reasonably tall buildings in the vicinity, and given the town centre location, this provides an established and distinct townscape, as such any outlook would be one of a built-up environment. It is acknowledged that any increase in height from the existing group of two-storey properties would clearly have an impact on outlook. However, given the existing tightly arranged flatted developments in the surrounding area, this is to be expected within an urban setting.
23. For the above reasons, the proposed development would not harm the outlook for neighbouring residents. In this regard it would comply with this aspect of Policy EN1 b) of the SCS which among other things requires the design of new development to have a satisfactory relationship to adjoining properties in terms of outlook.

Parking

24. The Council are concerned that the scheme as designed would not make adequate provision for car parking for the new housing. The knock-on effect of this would be an overspill of on-street parking on the surrounding roads. Therefore, highway safety and amenity issues could arise as a direct result of the lack of parking provision for the appeal scheme.
25. The approach of Policy CC3 of the SCS and the Parking Standards Supplementary Planning Guidance (SPG) adopted September 2011 is that new residential development should meet car parking standards. However, in town centre locations a flexible approach can be taken where *there is a genuine and convincing case to make a lesser provision that still meets the other requirements of Policy CC3*³. Both parties agree that a flexible application of the standards can be applied in this case, subject to supporting evidence.
26. As submitted the appeal scheme would provide 64 residential units with 21 car parking spaces. The parking requirement assuming 100% affordable housing as proposed would be 72 spaces as a maximum. Twenty of the spaces that would be provided would be accommodated within the existing basement of Phase 1A with the other space within Furlong Road. The appellant undertook a survey of the occupancy of the car park located in the basement of Phase 1A, which highlighted that of the 217 car parking spaces available the peak parking demand was 125 spaces (47%)⁴. Indicating that off-street parking could be viable using the existing underutilised spaces in Phase 1A.
27. The Council cast doubt on the reliability of these findings given that it asserts that residents have to pay an extra fee for a parking space and that there has been a proliferation of parking in restricted areas near to Phase 1A. However, the appellants confirm most spaces were sold with the apartments and not leased. There is also no conclusive evidence from the Council that cars parked in restricted areas are necessarily residents of Phase 1A. Therefore, I am satisfied that the survey can be relied on and that there is a surplus of parking space within the basement at Phase 1A.

³ Spelthorne Borough Council Parking Standards SPG page 2

⁴ Transport Appeal Statement prepared by Velocity Transport Planning dated January 2022 page 20

28. However, the Council also advises that the provision of parking in Phase 1A is the subject of a condition and a car park management plan securing them to the residents of Phase 1A. Any requirement by the UU to utilise that parking for this phase would lead to a breach of those conditions. For the purposes of this appeal therefore, I have assumed the provision of one space only for Blue Badge holders. There would therefore be an under provision of 71 spaces.
29. Policy CC3 of the SCS further seeks development to provide the level of car parking that would be necessary considering the site's accessibility by public transport and local circumstances. In essence the policy seeks to strike a balance between a development providing sufficient off-street parking to avoid causing overspill on-street, while not encouraging unnecessary car use. In this context it is clear that the site's access to other modes of transport should be considered carefully.
30. The site is well served by more sustainable forms of transport, with Staines railway and bus stations in close proximity. There are also several bus stops close to the site that serve local and wider areas. Furthermore, the closeness to Staines Town Centre provides potential occupiers with numerous facilities, alongside pedestrian and cycle routes in the locality with connections to the wider area. Overall, the site location does allow for future residents to choose modes of transport other than the private car. Therefore, I am satisfied that the appeal site is located within an area where residents would not necessarily require access to a car in order to meet day to day needs.
31. Given the significant choice of sustainable transport options, such as public transport, cycling and walking for potential occupiers, the issue is whether the amount of car parking proposed is acceptable in this instance. Given the flexibility of the parking standards in such a town centre location, an under provision can be acceptable, providing that the amount of parking resulting from the scheme can be accommodated.
32. Both the appellant and Council have undertaken parking stress surveys. The Council's results suggest that the identified residential roads are heavily parked with little or no available capacity for overspill parking for the proposal. By contrast the appellant's survey found that any excess parking demand generated by the proposal could be accommodated within 400m of the site without leading to parking stress.
33. In any case, I am mindful that the County Highway Authority (CHA) consider that this site is suitably located to promote non-car trips and enable residents of the development to occupy the site without requiring vehicle ownership. The CHA further highlight that the proposal includes the provision of Car Club membership and incentives to occupants of the development. These memberships would also allow the residents to use the Car Club vehicles provided within the vicinity of the site under Phases 1A and 1B.
34. In addition to this, a completed UU has been submitted with the appeal. This highlights the planning obligations which include several other measures to support and encourage sustainable methods of transport. The obligation explicitly provides 20 off-street parking spaces, a car parking management plan, restriction of parking permits, home delivery incentives, contribution to improve pedestrian facilities to Staines railway station and town centre, and a contribution to consultation on an extension to an existing Controlled Parking Zone (CPZ) or create a new CPZ within the vicinity of the proposal.

35. I have already discounted the 20 car parking spaces, and in respect of the restriction of parking permits and the home delivery incentives included in the wording of the UU, as these do not directly relate to land under control of the owner, they cannot therefore be considered as a planning obligation. I have not therefore taken these matters into consideration in this appeal.
36. However, the remaining obligations would contribute positively to reducing the reliance on private car journeys by any future residents. In any event, the requirement for car parking would be moderated by the accessible location of the appeal site.
37. The scheme can be described as having good connectivity for alternative sustainable methods of transport available to future residents. The appeal site is located in a highly accessible location within walking distance of the town centre where there is a good level of services and facilities. Therefore, taking all of these elements into account, I do not consider that the issue of a lack of parking would be so significant that it would lead to tangible highway safety or residential amenity issues.
38. I therefore conclude that the appeal scheme would make appropriate provision for parking. It would not be in conflict with the Policy CC3 of the SCS and paragraphs 107 and 108 of the Framework which among other things, seek to provide appropriate parking standards that reflect the accessibility, type of development and availability for public transport, alongside optimising development density in town centres where they are well served by public transport.

Planning Balance

39. There is no dispute that the Council does not have a five-year supply of deliverable housing, with the current provision of 4.8 years and therefore the provisions of paragraph 11 d) of the Framework must be considered. In such circumstances Paragraph 11 of the Framework states that the policies which are the most important for determining the application should be considered as out of date, and that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
40. Aside from the consideration of affordable housing provision, the proposal would provide the construction of 64 new residential units on previously developed land which would assist the Council in addressing its housing undersupply. This is also consistent with the Government's objective of significantly boosting the supply of homes, as contained in Paragraph 60 of the Framework. Given the relatively small shortfall in the Council's five-year supply of deliverable housing this weighs moderately in favour of the proposal.
41. Based on the information before me and what I saw when I visited the area, the appeal site is also in a sustainable location with a range of shops and facilities in relatively close proximity, with good access to alternative transport modes. Thus, any future residents would have good access to local facilities. Furthermore, it would also benefit the local area economically in the short term through construction activity and in the longer term through the introduction of an increased population to support local shops and services, all of which collectively attract moderate weight in favour of the proposal.

42. The Framework at Paragraph 60 states amongst other things, that it is important that a sufficient amount and variety of land can come forward where it is needed and that the needs of groups with specific housing requirements are addressed. Given that there is no certainty the proposal would deliver an appropriate level of affordable housing, this is in conflict with SCS Policy HO3 and with the social objective of the Framework, to which I attribute substantial weight.
43. Furthermore, I have found that the living conditions of existing residents would be acceptable with specific regard to impacts on outlook. Nevertheless, the proposal would provide an adverse impact to living conditions of existing occupiers due to the loss of daylight and sunlight to some of the existing units as a result of the appeal scheme. This would be detrimental to their living conditions and would not therefore provide for healthy accommodation. As such there would be development plan conflict in part with SCS Policy EN1 and the Framework in not providing acceptable living standards.
44. For the above reasons, I conclude that the adverse impacts of granting planning permission in this case would significantly and demonstrably outweigh the benefits identified when assessed against the policies in the Framework taken as a whole. As such the proposed development does not benefit from the Framework's presumption in favour of sustainable development.

Conclusion

45. Concluding as a whole, there are no material considerations, including the Framework, that would indicate that the decision in this case should be taken otherwise than in accordance with the Development Plan. Accordingly, for the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR