



Appeal Decision

Pre-Inquiry Meeting held on 15 June 2018

Inquiry Held on 24 and 25 July 2018

Site visit made on 25 July 2018

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 16 August 2018

Appeal Ref: APP/P5870/W/18/3200294

Land at the former Wandle Trading Estate, Mitcham, London CR4 4HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Redrow Homes (London) Limited against the decision of the Council of the London Borough of Sutton.
 - The application Ref C2017//78472, dated 20 November 2017, was refused by notice dated 13 March 2018.
 - The application sought planning permission for the development permitted by planning permission Ref C2016/74653/FUL, dated 15 December 2016, without complying with two of the conditions attached to that permission.
 - The conditions in dispute are No 6, relating to flood risk and drainage, and No 29, which lists the approved plans and other submitted documents.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by the appellants against the Council. That application is the subject of a separate Costs Decision.

Procedural Matters

Planning background

3. The Wandle Trading Estate is a former industrial site, straddling the River Wandle. The site is now divided into three parts, known as Phases 1-3. The present appeal relates primarily to Phase 2.
4. Full planning permission for the redevelopment of the whole site was granted in September 2014 (permission ref. C2013/68191/FUL). The development permitted was:

"Phased demolition of the existing buildings (apart from Riverside) and provision of a mixed redevelopment, comprising a total of 28 two-bedroomed, 45 three-bedroomed, and 21 four-bedroomed, two, three and four-storey terraced and semi-detached houses, and 4 two-bedroomed self-contained flats over garages, all for general sale, and a four-storey building comprising 9 one-bedroomed and 17 two-bedroomed self-contained flats for social housing; provision of 4,125 sq m of public open space, provision of a mix of 5 two- and three-storey buildings comprising a total of 1,152

sq m of Class B1 (business) floorspace, and retention and renovation of 'Riverside', together with a total of 218 car parking spaces (including garages, covered and surface parking) and 280 cycle spaces to serve the residential and commercial buildings, refuse and recycling facilities, new footbridge, children's play area, soft and hard landscaping, new access roads, and vehicular, cycle and pedestrian access from Goat Road, Budge Lane and Mill Green Road, and pedestrian/cycle access from Wood Street."

5. In October 2016, an application was made to remove or vary a number of the conditions attached to permission C2013/68191/FUL. The application followed the acquisition of Phases 1 and 2 of the site by the present appellants, Redrow Homes. The application related to Phase 1 only, and sought to substitute new plans and supporting information, in place of those previously approved. This application was approved, and the resulting permission (ref. C2016/74653/FUL), granted on 15 December 2016, was for:

"Variation of Conditions 2, 3, 9, 10, 12, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32 and 33 of planning permission C2013/68191/FUL to enable a phased development and to incorporate minor material amendments to the southern site layout (proposed Phase 1) including substitution of 3 No 2-bedroomed houses for 3 No 3-bedroomed houses, amendment to house types and flats design, associated alterations to parking and landscaping; together with removal of conditions 4, 5, 13 and 21 and submission of information to discharge conditions (as amended) 2 (materials), 3 (means of enclosure), 12 (contamination), 18 (construction method statement), 22 (archaeology), 24 (hard landscaping), 25 (soft landscaping), 27 (energy), 28 (ecology buffer zone) and 30m (piling risk assessment)."

The appeal

6. The present appeal seeks to vary Conditions 6 and 29 of the 2016 permission, to substitute a full set of new plans for Phase 2 of the scheme, and associated new proposals for flood risk and drainage. The proposal is therefore to carry out the development described in the 2014 permission, without complying with the plans and drainage information specified in Conditions 6 or 29 of the 2016 permission, and to replace these with amended conditions specifying the new plans and drainage information.
7. At the inquiry, it was confirmed that the amendments sought in respect of Condition 6 were contingent upon the proposed variation to Condition 29 being accepted. The variations to both conditions therefore either stand or fall together.

Amended plans

8. Following the Council's refusal of permission in March 2018, and after the submission of the appeal, the appellants then submitted a number of further revised plans, with a view to substituting these for some of those considered and refused by the Council¹. The changes sought in these new plans concerned the proposed apartment block in the north-east corner of Phase 2, and their effect was to revert to the previously approved design for this part of the scheme, as permitted in the 2014 permission.
9. The revised plans have been subject to consultation carried out by the appellants in May 2018, and were discussed at the Pre-Inquiry Meeting (PIM) held on 15 June 2018. The new plans represent a lesser change from the

¹ Details of the amended plans are set out in a schedule submitted by the appellants on 11 June 2018

approved scheme than those originally proposed, and the Council does not object to their substitution. In all the circumstances, I consider that no-one will be prejudiced by the acceptance of these new plans, in place of the relevant plans submitted at the application stage. I have dealt with the appeal on this basis.

Section 106 obligations

10. The 2014 permission was subject to a Section 106 agreement, relating to on-site affordable housing, plus the provision of public open space including an extension of the Wandle Trail, and also various other matters.
11. The 2016 permission incorporated a Deed of Variation which carried forward the same obligations (where not already discharged), together with provision for a late-stage viability review, triggering an additional contribution to off-site affordable housing, in the event of a profit surplus.
12. The present appeal proposal is accompanied by a further Deed of Variation, dated 26 July 2018, in similar terms.

Withdrawal of refusal reasons

13. The Council's refusal of permission in March 2018 was originally based on 6 refusal reasons (RRs). RR4 related to flood risk, but this was withdrawn in May 2018 in the light of the appellants' subsequent submission of a Supplementary Flood Risk Assessment and an Addendum report. RR5, relating to affordable housing and housing mix, was withdrawn shortly before the inquiry, in response to the appellants' amended plans, and the subsequent discussions regarding the Deed of Variation. RR6, which was about the procedural acceptability of the appeal scheme under S.73, was not pursued following discussions at the PIM. The parties' agreement on all these matters is set out in the Statement of Common Ground (SCG), dated 29 June 2018.
14. RR3 related to car parking. This RR was withdrawn on 20 July 2018, shortly before the inquiry, in the light of the appellants' rebuttal evidence on highway matters. The two remaining RRs relate to design matters and amenity space.

Changes to national planning policy

15. During the inquiry, a revised National Planning Policy Framework (NPPF) was published. The contents of the new document were discussed in evidence and submissions. I have taken account of the revised NPPF in my decision.

Planning Policies

The Sutton Local Plan (adopted February 2018)

16. The appeal site largely corresponds to Local Plan Site S56, which is allocated for housing and employment, with an indicative capacity of 124 dwellings and 1,152 sq m of B1 floorspace. Amongst other site-specific requirements, the development should include a new public open space in Area A (Phase 3 of the 2014 planning permission), to form part of the Wandle Trail and Wandle Valley Regional Park. Over the site as a whole, it should improve access, enhance the riverside setting, and provide high quality public realm improvements.
17. The site also falls within the Wandle Valley Renewal Area, where Policy 5 seeks to encourage regeneration, through the redevelopment of allocated sites such

as S56, and through a number of other initiatives. Amongst these, the Council is to work with various agencies to improve the River Wandle, expand the network of walking and cycling routes, including the Wandle Trail, and enhance the river banks' biodiversity. Development is required to be of high quality and to respect the river and its setting.

18. Policy 9 relates to housing sizes and standards. Amongst other things, new dwellings are required to provide adequate private amenity space; the amount is to be determined on a case-by-case basis, having regard to the Council's Design Guide².
19. Policy 25 seeks to retain and add to the Borough's existing open spaces, and to deliver the Wandle Valley Regional Park, in the form of a network of interconnected spaces based around the River Wandle.
20. Policy 28 requires all developments to be of high quality design. Amongst other things, developments should be attractive, inclusive, respectful of the local context, and suitable in scale and massing. They should also contribute to the street scene and public realm, improve movement through the area, respond to natural features, and protect or create local views.
21. Policy 29 seeks to protect the amenities of existing and future occupiers, through good design and environmental standards. The supporting text cross-refers to the Design Guide.

The London Plan (adopted March 2016)

22. In the London Plan, Policy 3.5 requires housing developments to be of the highest quality, and to enhance the quality of local places. Policy 7.4 seeks to ensure that developments relate well to their surroundings, by connecting with existing natural features and reinforcing the area's positive elements; buildings should also be human in scale, creating positive relationships with street level activity. Policy 7.5 encourages the creation of a public realm that is secure, accessible, inclusive and connected; spaces should be uncluttered and easily understood, and should facilitate ease of movement. Policy 7.6 seeks high quality architecture which contributes positively to the streetscape and wider cityscape.
23. The appeal site falls approximately within one of the Regeneration Areas shown diagrammatically on Map 2.5. Policy 2.14 states that the Mayor will work to co-ordinate the sustained renewal of such areas and prioritise them for neighbourhood-based action and investment.

Supplementary Guidance

24. 'Creating Locally Distinctive Places: Sutton's Urban Design Guide' was adopted as a Supplementary Planning Document (SPD) in January 2008. At paragraph 2.14, the SPD sets out minimum standards of accessible private garden space for differing types of dwelling.
25. The Mayor of London's 'Housing' Supplementary Planning Guidance (SPG) is dated March 2016. Standard 26 sets out an alternative minimum amount of private outdoor space for dwellings, and Standard 27 gives minimum dimensions for balconies.

² 'Creating Locally Distinctive Places: Sutton's Urban Design Guide' SPD, January 2008

Emerging plans

26. The draft City Plan for London, and the draft Neighbourhood Plan for Hackbridge and Beddington, have not yet reached the examination stage. It is agreed by the parties that both carry limited weight in the present appeal.

National Policy

27. The revised NPPF sees the creation of high quality buildings and places as fundamental to planning, and a key aspect of sustainable development³. Amongst other aims, developments should function well, be visually attractive, establish a strong sense of place, and optimise the site's potential⁴. Schemes should take opportunities for improving the quality of the area, or the way it functions; but where the scheme accords with relevant policy expectations, they should not be refused on design grounds. Authorities are also urged to ensure that the quality of approved developments does not become materially diminished, due to changes between permission and completion⁵.

Main Issues

28. In the light of the above considerations, and all the other matters raised, I consider that the main issues in the appeal are:
- the effects of the proposed revised plans on the character and appearance of the area, with particular regard to the treatment of the Wandle riverside area;
 - and whether the development would provide adequate amenity space for future occupiers.

Reasons for decision

Character and quality

29. The proposed scheme would create a riverside path, through the Phase 2 site, along the eastern bank of the River Wandle. This section of the river bank has recently been cleared, re-graded and prepared for landscaping. It is already evident that this part of the site has the potential to provide an attractive linear open space and movement route, with a pleasant, tranquil character. When Phase 3 is developed, there will be a pedestrian/cycle bridge connecting the east bank to the Wandle Trail. This connection is likely to increase the use of the riverside areas on both banks. In addition, the clearance of the roadside vegetation at Goat Bridge has opened up new public views over the riverside.
30. There is some uncertainty as to whether the route through Phase 2 will ultimately form part of the Wandle Trail, or indeed whether it will be open to the general public. It also remains to be seen whether it will be possible to make a direct connection to Goat Road, close to the bridge. But even if none of these aims is achieved, the riverside walkway would still be a valuable facility for residents of the development, and as such would be likely to attract a good deal of use.
31. The riverside area within Phase 2 is therefore likely to be a focal point for the development as a whole, in both visual and functional terms. As such, the

³ Revised NPPF, July 2018: paragraph 124

⁴ Revised NPPF, July 2018: paragraph 127

⁵ Revised NPPF, July 2018: paragraph 130

- treatment of this part of the scheme, including the adjoining buildings, is a key element of the development.
32. The scheme now proposed would include 5 terraces of houses running at right-angles to the river, with the flank walls of the end units fronting onto the proposed new walkway. In this regard the scheme would echo the 2014 permission. But unlike that approved scheme, in the present proposals the 3-storey flank elevations would be largely featureless. In each case, the flanks would have only two narrow windows, both at upper-floor levels. To my mind this would give the buildings the appearance of turning away from the riverside. Some vertical brick banding is proposed, including a punched or recessed brick-on-end detail, but no other form of articulation; this small cosmetic gesture would not make up for the lack of visual interest in the buildings themselves.
 33. I appreciate that the appellants do not share the Council's enthusiasm for the overhanging bays, projecting gables, and timber cladding that featured in the previously approved scheme. I agree that it would not be appropriate to insist on any of these items being retained; very rarely, on any site, is there only one design approach that could be acceptable, and it must therefore be open to the developer to explore alternatives. But nonetheless, in my view, the elevations that are now proposed for the riverside walkway would appear anonymous and rather lifeless. As such, they would not complement the setting, or contribute to the creation of an attractive public (or semi-public) space.
 34. I accept that flush windows, as now proposed, can provide a wider field of view than bay windows. However, the windows proposed in the present scheme would be small, and few in number. Consequently, they would not provide a good level of natural surveillance, or a feeling of security. To my mind, this minimalist approach to fenestration would risk this key area of the development becoming perceived as a 'no-man's land'.
 35. The proposed housetypes would bear some resemblance to those used by the appellants in Phase 1 of the development, and to this extent would achieve some degree of consistency in design terms between Phases 1 and 2. But these two areas are separated by the Mill Pond and Mill Stream, and the only physical connection is via a proposed footbridge. In urban design terms there is no particular requirement, nor any clearly explained advantage to be gained, from carrying through the same design theme throughout both areas. Indeed the attempt to impose a uniform 'company style' seems to me more likely to act as a barrier to creating local distinctiveness and identity, or a sense of place. I therefore give little weight to the arguments made on this point.
 36. In addition to the above, the proposed scheme would position 23 storage cupboards for household refuse bins, in five groups, alongside the riverside walk. I accept that the design of these structures could be controlled by condition, and it might be possible for them to be attractively designed; but no such details are before me, and it seems more likely that they would be fairly basic and utilitarian. In the absence of any evidence to the contrary, it seems to me that the presence of such a large number of bin stores would be an unduly dominant feature in this sensitive location, and would harmfully detract from the ambience of the walkway and riverside area, as a place for relaxation and enjoyment. Over and above this, there is also the potential for related problems, such as unpleasant smells, excess refuse, loose bags, cupboards left

open, scavenging by animals, and larger items awaiting collection.

Undoubtedly some form of management regime could be put in place to deal with these issues as and when they occurred, but it is difficult to see how they could be prevented from occurring in the first place, and indeed recurring. This reinforces my view that the riverside walkway is not a suitable location for the storage of refuse.

37. The new scheme would also make some changes to the previously approved boundary treatments alongside the walkway. However, to my mind the effects of these changes would be broadly neutral. They would therefore not significantly offset the harm resulting from the design of the flank elevations and the siting of the bin stores.
38. As a result of these significant defects, I conclude that the proposed scheme would damage the setting of the River Wandle, and fail to secure a high quality development or public realm. In these respects it would conflict with the requirements of Local Plan allocation S56 and Policy 5. It would also fail to achieve the aims of Local Plan Policy 28 or London Plan Policies 3.5, 7.4, 7.5 and 7.6 with regard to place-making, the street scene, the public realm and the quality of new development. The scheme would also fail to take the opportunity to enhance the area and the way it functions, and would thus diminish the quality of development compared to the previously approved scheme, contrary to NPPF paragraph 130. In all these respects, the appeal scheme would cause unacceptable harm to the character and appearance of the local area.

Amenity space provision

39. The standards set out in the London-wide Housing SPG require a minimum of 5 sq m of private outdoor space for 1- or 2-person dwellings, plus an extra square metre for each additional person. Balconies should also have a minimum depth and width of 1.5m. Whereas, in the Sutton Design Guide SPD, the requirement is for all flats, of any size, to have a minimum accessible private garden space of 25 sq m.
40. In the appeal proposals, each of the 26 apartments in the north-eastern corner of Phase 2 would have its own small private balcony or terrace. There is no dispute that these would meet the London SPG standards, but they would fall a long way short of the Sutton SPD requirement.
41. I appreciate the Council's desire to enforce the latter where possible. The SPD sets local standards, appropriate to the nature of the Borough and its context. Sutton is part of outer rather than inner London; its character is mainly suburban and densities are not as high as in more central areas. Access to good-quality amenity space is important to residents' health and quality of life. Although the SPD was adopted 10 years ago, the private amenity space standard is specifically referred to in the text of the Local Plan, which was adopted only this year. The standard therefore remains up to date and relevant. These are persuasive arguments, which carry some force.
42. However, the circumstances at the appeal site are somewhat unusual. In the 2014 permission, there were shortfalls of private amenity space in Phase 2 for both the flats and the houses, but these were all to be made up through the provision of three areas of communal gardens, to be shared by all residents. The scheme now proposed omits these communal areas, but reallocates the

space, to increase the gardens of the individual houses. The loss of shared space for the 26 flats is therefore offset by the gain for the occupants of the 45 houses. To my mind this gain would be significant, because all of the houses would be 3-bedroomed family-sized dwellings, and there is little doubt that adequately-sized, policy-compliant individual gardens would represent a more satisfactory form of provision for these units. There is no evidence to suggest that this could be achieved whilst also making full provision for the flats too. I accept that some of the 2-bedroomed flats may also be occupied by families, but overall it seems to me that the harm to the amenity of the flats would be outweighed by the benefits to the occupiers of the houses.

43. The appeal site is close to at least three existing public open spaces, at Mill Green, Poulter Park and Watercress Park. Within the development itself, as well as the riverside area, there will also be a sizeable area of new open space to be created within Phase 3, and an equipped play area for varying age groups, within Phase 2 itself, adjacent to the apartment block. Although none of these would serve quite the same purpose as the previously proposed communal gardens, I am satisfied that the occupiers of the flats would have ready access to a variety of outdoor spaces within a short distance from their homes.
44. The appeal scheme's failure to meet the SPD standard in full means that the scheme does not fully accord with Policy 9 of the Local Plan. But that policy allows for decisions to be made on a case-by-case basis, and in the present case, I am satisfied that the circumstances justify departing from those standards to some degree. For these reasons, I conclude that the proposed scheme would provide adequate private amenity space.

Other Matters

45. There is no dispute that the Wandle Trading Estate is previously developed land, allocated for development, in a sustainable location, and a designated Regeneration Area. The approved housing on the site forms part of the supply needed to meet the Borough's targets, and to ensure a 5-year supply. The site is also said to be located in an Opportunity Area and a Mayoral Priority Area for housing, although I have no details of these designations. I have no reason to doubt any of these submissions, and on this basis I accept that the speedy completion of the development is to be encouraged.
46. However, the development already has full planning permission, and there is no evidence to suggest that Phase 2 could not be implemented in the form already approved. The appellants are not keen to carry out this part of approved scheme in full, but they have nevertheless started construction work on the apartment block, and have continued to apply for the discharge of conditions relating to other parts of the Phase 2 site. The approved scheme is therefore a realistic fallback. The appellants also acknowledge that if the present variation is refused, they will carry on trying to re-design the scheme, to find another acceptable alternative. One way or another therefore, I see no reason to doubt that Phase 2 will be developed, irrespective of the outcome of this appeal. The dismissal of the appeal would probably result in some delay, but there is no evidence that this would need to be protracted. Compared to the need to secure an acceptable quality of development, the benefit of enabling the earliest possible completion carries limited weight.

47. The completion of Phase 2 would bring forward the delivery of 71 dwellings in total, including 30 affordable units. There would also be the potential for an additional affordable housing contribution arising from the late-stage review in the S.106 agreement. The development would provide jobs during construction, and would generate increased local spending in the longer term. It would contribute to the area's regeneration, and bring with it some new open space, play provision, landscaping, and ecological improvements. It would also contribute to local infrastructure through CIL and the S.106 provisions. However, all of these benefits are already provided for in the existing permission; indeed the scheme now proposed would deliver slightly fewer dwellings than the approved scheme.
48. The appellants suggest that an additional condition could be imposed, requiring the approval of a 'public access strategy'. I agree that if such a condition were to result in a guaranteed public right of access through Phase 2, including the use of the riverside walkway and open space, and a connection to the Wandle Trail, then this would improve significantly on the position that exists under the existing permission. However, the condition as currently proposed leaves these matters still to be agreed, and the extent of the benefit is therefore uncertain. I note that there is nothing in the S.106 Deed of Variation that brings any further clarity on these matters. Consequently, I again give limited weight to any benefits arising from the suggested additional condition.

Conclusions

49. For the above reasons, I conclude that although the proposed changes to the approved plans would provide adequate amenity space, they would cause harm to the character and appearance of the area, due to their adverse effects on the setting of the River Wandle and the associated walkway and open space area. As a result, the proposed variation to Condition 29 would bring the Wandle Trading Estate development into conflict with development plan policies, including the Local Plan's Policy 28 and site-specific requirements for site S56, and London Plan Policies 3.5, 7.4, 7.5 and 7.6.
50. This harm is not outweighed by any other considerations. There is no suggestion that the development plan is other than up to date and consistent with the NPPF. The proposed variation to Condition 29, to substitute new plans, should therefore be refused.
51. With regard to Condition 6, although the Council has no objection to the revised proposals on flood risk and drainage, this new information is relevant only if the variation to Condition 29 were approved. As agreed at the inquiry, an approval for the proposed variation to Condition 6 on its own would serve no purpose, and indeed would potentially conflict with the approved plans forming part of the extant 2014 permission. The proposed variation to Condition 6 must therefore also be refused.
52. The appeal is therefore dismissed.

J Felgate

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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FOR THE APPELLANT:

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They called:

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DOCUMENTS TABLED DURING AND AFTER THE INQUIRY

COUNCIL DOCUMENTS

CO/1 Opening submissions
CO/2 Plan No. MCA-1317/04[M]: 'Watercourse, Mill Stream and Mill Pond details'
CO/3 Plan No. MCA-1617/01[H]: 'Landscape details, Assael scheme, for construction'
CO/4 Closing submissions

APPELLANTS' DOCUMENTS

APP/1 Opening submissions
APP/2 Comparative Table of amenity space provision in approved and appeal schemes
APP/3 Police consultation response to application C2016/74653, dated 12 July 2016 (the approved scheme)
APP/4 Proposed additional condition, re: public access strategy
APP/5 Closing submissions
APP/6 Costs application
APP/7 Section 106 agreement, dated 26 July 2018

GENERAL DOCUMENTS

GEN/1 Statement of Common Ground, dated 29 June 2018
GEN/2 Agreed draft list of amended conditions (received 20 July 2018)
GEN/3 Additional extracts from Sutton Local plan (Inspector's request)
GEN/4 Extract from Local Plan Policies Map (Inspector's request)
GEN/5 Extract from the Site Development Policies DPD, March 2012 (superseded)
GEN/6 Agreed site visit route plan
GEN/7 Agreed final list of amended conditions (received 3 August 2018)