



Appeal Decision

Hearing held on 23 & 30 March 2021

Site visits made on 22 March & 16 April 2021

by Matthew Nunn BA BPI LLB LLM BCL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th August 2021

Appeal Ref: APP/P5870/W/20/3261627

2-4 Lodge Place, Sutton, SM1 4AU

- 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 The Rachel Charitable Trust against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2019/01977, dated 21 November 2019, was refused by notice dated 29 May 2020.
 - The development proposed was originally described as 'demolition of existing buildings and redevelopment of the site for a mixed-use development with 1,311 sqm (GIA) of commercial space (flexible A1 or A3 or B1 use) on the ground floor with 48 Class C3 residential units on (up to) six upper floors with associated communal amenity space, cycle parking and refuse and recycling storage facilities'.
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Decision

1. The appeal is allowed and planning permission granted for the demolition of existing buildings and redevelopment of the site for a mixed-use development comprising commercial space (Class E: Commercial, Business and Service) on the ground floor with 48 residential units (Class C3) above, with associated communal amenity space, cycle parking, refuse and recycling facilities at 2-4 Lodge Place, Sutton, SM1 4AU, in accordance with the terms of the application Ref DM2019/01977, dated 21 November 2019, subject to the conditions in the attached schedule.

Procedural Matters

2. A new version of the London Plan¹ has been adopted since the application was originally refused by the Council. The Council has produced a schedule indicating the relevant new policies from that document which was discussed at the Hearing. I have assessed the appeal in relation to the new policies.
3. At the Hearing, the parties agreed an amendment to the description of the development was necessary to take account of recent revisions to the Use Classes Order to include reference to flexible 'Class E' use.
4. A planning obligation dated 13 April 2021 has been completed between the parties. The Council has since confirmed² that refusal ground No 6 relating to the lack of mechanism to ensure a 'car free' development and refusal ground

¹ Adopted March 2021

² Email from the Council dated 29 April 2021

No 7 relating the absence of a carbon offsetting contribution have now fallen away as a result of the completion of the planning obligation.

5. A new version of the National Planning Framework ('The Framework') was published on 20 July 2021³. The views of the parties were sought and the comments received have been taken into account in my decision.

Main Issues

6. The main issues are:

- (i) the provision of affordable housing, including the viability and deliverability of the scheme;
- (ii) the effect of the proposal on the character and appearance of the area;
- (iii) the effect of the proposal on the living conditions at neighbouring properties in terms of daylight, privacy and noise; and
- (iv) whether the proposal would comply with policies relating to air quality.

Reasons

Affordable Housing, Viability and Deliverability

7. Policy 8 of the Sutton Local Plan ('the Local Plan') states that the Council will seek a minimum of 35% of all dwellings to be affordable on a site when negotiating on individual and mixed-use schemes on all sites capable of delivering 11 units or more. In applying this policy, the Council will have regard to the following: individual site costs, economic viability, availability of public subsidy and any other scheme requirements. Policy H5 of the London Plan re-iterates that for proposals of this type, the threshold level for affordable housing is also set at a minimum of 35%.
8. The appellant has submitted a Viability Study⁴ indicating that the scheme shows a deficit and could not support an affordable housing contribution. The Council, after analysing the appellant's Viability Study, has accepted that even though not all the development appraisal inputs are agreed, no affordable housing could be viably provided in the scheme⁵. Based on a notional developer's profit of 20% and with no affordable housing contribution, the appellant says the proposal would be in deficit against the Benchmark Land Value. This is not disputed by the Council, although its calculation shows a smaller deficit than the appellant's figures. Therefore, and importantly, the absence of affordable housing within the proposal is not in dispute. Rather, the Council's sole concern relates to what it perceives as a lack of justification of the 'deliverability' of the scheme.
9. The appellant's viability evidence mentions that arguably a development could be considered unlikely to be delivered unless it can achieve a profit margin of

³ Replacing the version published in February 2019

⁴ Turner Morum Report, January 2020

⁵ Aspinall Verdi Report, January 2021; and Council's Closing Statement which records the parties are 'in agreement that no affordable housing can be provided on the site'.

around 20%⁶. However, the appellant's evidence also acknowledges that developers sometimes can take a 'commercial decision' to proceed at lower levels, based on an individual site basis⁷. At the Hearing, the appellant stated that it was content to proceed on a reduced level of profit. The appellant's submissions were that, with developer's profit adjusted downwards to 11.2%, the scheme would still be viable, albeit with a lower profit, and therefore deliverable. In other words, whilst the appellant's viability evidence shows a deficit, the proposal could be delivered without making a loss but with a lower level of profit than the objectively 'reasonable' level specified in the viability study.

10. I accept the Council's point that little detailed written evidence has been provided by the appellant in respect of the lower profit figure. However, at the Hearing, I heard that the appellant is a well-funded Charity with substantial assets, including local property holdings, with the ability to raise the necessary finance. I was also advised that the appellant has owned the site for a considerable time and therefore has not acquired it for purely speculative purposes. The appellant currently sees it as a declining asset and is keen to see an improved return on the property, thus benefiting its charitable activities. Delivering the scheme would achieve that aim. These submissions were not challenged or disputed by the Council at the Hearing.
11. My attention has been drawn to Sutton's Affordable Housing and Viability Supplementary Planning Document (SPD) 2020⁸ and the Mayor's Affordable Housing and Viability Supplementary Planning Guidance (SPG) 2017⁹. Both documents advise applicants to demonstrate deliverability where a viability appraisal shows a deficit. The appellant highlights a previous appeal decision that found that both these documents were not 'policy' and should not be construed as such¹⁰. Whilst I accept that the Sutton SPD and Mayor's SPG may not have the status of development plan policy, they nevertheless provide guidance and are clearly a material consideration in planning decisions and cannot be ignored.
12. However, there is no single approach to assessing deliverability and arriving at a 'correct' answer on the matter is far from an exact science. There is a danger that the process becomes a purely abstract theoretical exercise rather than one grounded in reality. The references to deliverability in the Sutton SPD and Mayor's SPG relate to information that may be of relevance in development appraisals, but neither document directs that planning permission should be refused on the basis of deliverability. Moreover, neither Local Plan Policy 8 or London Plan Policy H5 specifically refer to 'deliverability', nor do those policies direct refusal on that basis. Similarly, there is nothing within the Framework that advocates such an approach.
13. I acknowledge that the deliverability concept has been introduced to establish that a target profit and benchmark land value can be achieved with the required level of planning obligations to be provided on a site, and to prevent a situation arising where viability may improve in the future and any 'betterment' not being able to be captured. In this case, however, it is of some relevance

⁶ Turner Morum Report, Paragraph 2.16

⁷ Ibid, Paragraph 7.3

⁸ Paragraph 5.40

⁹ Paragraph 3.10

¹⁰ APP/P5870/20/3249085

that the Council has accepted no affordable housing can be provided as part of the proposal. Therefore, and unusually, no dispute arises on the often potentially contentious issue of the quantum of affordable housing provision. Thus, it is hard to see why the deliverability of the scheme should assume any central importance. In any event, the completed planning obligation includes early and late stage viability reviews that potentially would require the provision of affordable housing should it become viable to do so.

14. In pursuing this appeal, there is no reason to assume that the appellant is not prepared to accept a lower profit in this case. I see no advantage in doubting that the appellant is content to bring forward the scheme on that basis. Moreover, given the clear aim of the Government Policy is to significantly boost the supply of homes¹¹, make effective use of land to meet the need for homes¹² and to promote and support the development of under-utilised land and buildings¹³, I find no sound policy reason to withhold permission on the basis of deliverability.

Character and Appearance

15. The appeal site comprises an irregularly shaped site on the southern side of Lodge Place within Sutton Town Centre. The site is currently occupied by an undistinguished single storey building comprising two retail units and includes expanses of parking either side. To the west, fronting the High Street, are three storey terraced parades with retail units at ground floor level, of varying styles, a number dating from the late 19th / early 20th century period. Immediately to the north is a relatively modern redbrick three storey terrace of flats, and on the corner of Lodge Place and Throwley Way is 'Windsor House', a contemporary styled building with a white finish rising to six storeys. Thus, there is a wide range of buildings in the locality, of different ages, sizes, designs and uses, including residential and commercial, with no single style predominant.
16. The Council's objection to the scheme relates to the massing and bulk of the eastern elevation, described as excessive, resulting in a dominant and imposing development, and the lack of high quality detailing. The building would comprise a building of three stepped elements: a lower three storey section on the western section closest to the High Street; an intermediate five storey section, and a seven storey part wrapping around the corner of the site fronting on to Throwley Way. To my mind, this stepped approach would successfully break up the mass and bulk of the building and mediate effectively between the lower three storey buildings fronting the High Street and the more substantial structures fronting Throwley Way.
17. In addition, the elevations would include recessed sections, and inset balconies, as well as protruding glass boxes, providing interest, articulation and visual punctuation to the facades. The eastern elevation itself is articulated in separate parts, inset at the southernmost end, and at the northern end curving around to a recessed element. An 'active' commercial frontage would be created at ground floor level. The scheme would employ a varied palette of materials, including a combination of multi-grey and darker grey brick, glazed tiles, as well as render and other finishes that would create diversity and

¹¹ Paragraph 60 of the Framework

¹² Paragraph 119 of the Framework

¹³ Paragraph 120 of the Framework

articulation, thereby avoiding a bland appearance. All these design features would enliven the elevations, avoiding a monolithic look.

18. The proposal would rise significantly higher than the existing building. Importantly, however, the site is identified within the Local Plan as an allocation under Policy STC6 ('South of Lodge Place'). This identifies the site for a 'mixed use' comprising residential and retail. The policy also says, amongst other things, that any buildings should be between 1-7 storeys in height and provide active frontages on the ground floor along Lodge Place. Furthermore, Policy 28 advises that within Appendix 7 of the Local Plan, the area falls within an 'Area of Taller Buildings Potential' where, in respect of the appeal site, buildings of 7-10 storeys may be acceptable. These policies establish the principle of a taller building in this location. The proposal would be consistent with both policies in terms of its height, and it is notable that the Council's delegated report records that the 'height and scale of the development is acceptable'¹⁴.
19. I note that the Council has recently resolved to grant permission¹⁵ for a tall building of some twenty storeys on a site in the locality to the rear of Times Square Shopping Centre¹⁶ fronting on to Throwley Way. Whilst there are clear differences in the urban context of that site, it does nevertheless establish that the Council itself is content to allow taller developments in the locality. It also reinforces my view that the appeal proposal, of significantly less scale, would not appear alien or out of place, especially given the varied character of the area.
20. The site lies adjacent to, but outside, the Sutton Town Centre Conservation Area. Its significance largely derives from Sutton's historical status as an important highway route and stopping point, and the range of commercial architecture, much from the mid-19th century onwards¹⁷. In the immediate vicinity, No 166 High Street to the north of the site, and Nos 152 to 164 to the west form part of the Conservation Area. As the Council notes, the scheme would not be readily visible from the High Street, although the building would be seen, rising in scale in views towards Throwley Way, when looking eastwards down Lodge Place. From here, the building would undoubtedly create a greater sense of enclosure. However, the varied character of the locality means that the appeal scheme would be appropriately assimilated in the area without causing harm or appearing incongruous. The Council has not raised any objections in relation to any harmful impact on the adjacent Conservation Area. I am also satisfied that the proposal would preserve its setting.
21. The Council have alleged that the proposal would not improve the public realm. I understand that the appellant offered to fund some public realm improvements via the planning obligation, although this was not taken forward by the Council. The Council has suggested a greater 'set back' of the building fronting on to Lodge Place. In fact, I note that the new scheme would be marginally set back from the existing building line, resulting in a wider footpath. I see no advantage in any significantly greater setback, as advocated by the Council, and do not consider it would radically alter the appearance of

¹⁴ Paragraph 5.30

¹⁵ Subject to the completion of a legal agreement and 'Stage 2' referral to the Greater London Authority

¹⁶ DM2020/01573

¹⁷ Sutton Town Centre Conservation Appraisal and Management Plan 2019

the building or public realm. The Council has described the appeal site as of 'poor character'. I consider the new proposal would improve the area's overall appearance, including the public realm.

22. Overall, I am satisfied that the proposal would comply with Policy 28 of the Local Plan which requires new development to be of the highest standard, especially in terms of architectural detailing, respecting local context and responding to local character and heritage assets. It would also comply with Policy D3 and D4 of the London Plan. Together, these policies seek to make the best use of land through a design led approach that optimises site capacity, whilst delivering high quality design and an appropriate form of development.

Living Conditions

23. Daylight: The Council has expressed concerns in terms of the effect on living conditions at neighbouring properties, especially in terms of daylight and privacy. The nearest residential properties that would be affected are the flats above Nos 152 to 164 High Street, the residential properties to the rear of 166 High Street (Lodge Place), and the flats within Windsor House. Clearly, the scheme would create a building of greater bulk which would significantly alter the outlook and views from various properties in the vicinity.
24. The appellant's Daylight and Sunlight Report¹⁸ uses the methodology set out in the BRE Guidelines¹⁹. In essence, the BRE Guidance says that if, following construction of the proposed development, the Vertical Sky Component (VSC)²⁰ is less than 27% and it is less than 0.8 times its former value, then the reduction in daylight could be noticeable, and the proposed development can be seen to have an adverse impact.
25. Although the BRE Guidelines provide an established metric for the assessment of impacts, they do not explicitly give guidance on what would be acceptable in specific circumstances. Indeed, it is made clear that numeric values should be interpreted flexibly and sensibly, especially in more built-up areas where higher degrees of obstruction may be unavoidable. The Mayor's Housing SPG also advises that an appropriate degree of flexibility needs to be applied when using the BRE Guidelines, taking into account local circumstances and the need to optimise housing capacity²¹. It continues that fully optimising housing potential on large sites may necessitate standards which depart from those presently experienced, but which still achieve satisfactory living conditions and avoid unacceptable harm.
26. The appellant's Daylight and Sunlight Report notes that a number of surrounding properties will see a reduction in daylight and breach the BRE Guidelines. In particular, the majority of the rear windows to 152-164 High Street would fall below the 27% VSC figure as set out in the BRE Guidelines, but most windows achieve a lower VSC figure of 20%. In fact, in a number of cases the windows only fall marginally below 27% figure. At No 166 High Street (Lodge Place), again a number of windows would fail the 27% VSC, but the majority would achieve 20%. At Windsor House, a number of windows fall below the 20% threshold but it should be noted that some windows are recessed because of balconies and daylight levels are already lower.

¹⁸ Daylight and Sunlight Assessment, MLM Consulting Engineers Ltd

¹⁹ Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice (2011)

²⁰ This relates to the amount of light entering a room

²¹ Housing Supplementary Planning Guidance, March 2016, Paragraph 1.3.46

27. Of considerable relevance is that the principle and acceptability of a building of larger scale and bulk of up to 7 storeys has already been established on this site by virtue of Policy STC6 of the Local Plan, as well as the site's inclusion within an Area of Taller Buildings Potential. This being so, it is inevitable that a more urbanised and enclosed feeling will be created at certain properties in the vicinity. The BRE Guidelines are an aid to analysing effects and they can assist in quantifying effects of development in terms of whether a room would become more gloomy, but they are not standards that, if not complied with, must dictate a scheme must fail. What is acceptable in a particular context remains a matter of judgement. The overall conclusions of the appellant's Report is that 'some of the surrounding properties will see minor reductions in daylight...in particular those which are closer to the proposed development'²². In my judgement, notwithstanding some breaches of the BRE Guidelines, I am satisfied that daylight levels for the most part would be acceptable in nearby properties, and no conflict would arise with Policy 29 of the Local Plan concerned with protecting amenity.
28. Privacy: The Council is concerned that the separation distances between the western elevation of the proposal and the existing properties would be insufficient and would result in overlooking and loss of privacy. The separation distances when measured from the edge of balconies would fall below 10 metres. However, the design of the west elevation proposes heavily 'inset' or recessed balconies. This means that the outside walls of the flats would be set back some distance from the outer 'skin' of the western elevation, thereby increasing the actual distance between the external windows/doors of the new flats and the existing properties. In addition, not all the windows at 154-164 High Street serve habitable rooms. The greater impact arising therefore would potentially be overlooking from the balconies themselves. To mitigate any loss of privacy, the appellant proposes the use of opaque glass in the screens which could be secured by condition.
29. I acknowledge that some existing residents would undoubtedly experience a significant change in outlook, but it must be remembered that the Council has already accepted the principle of a taller, more substantial building on the site by virtue of Policy STC6. The Council mentions the possibility of a 'slightly increased'²³ separation on the western elevation in order to improve the situation. However, I am not convinced this would significantly alter the relationship between the new and existing buildings. Some degree of mutual overlooking is inevitable in urban locations such as this. Overall, I am satisfied that no unacceptably harmful loss of privacy or overlooking would result, and there would be no conflict with Policy 29 of the Local Plan.
30. Noise: The Council's Hearing Statement²⁴ records that it 'is satisfied with the appellant's methodology and conclusions with regard to the protection of future occupiers against environmental noise sources (principally road traffic noise)'. The Council's main concern, re-emphasised at the Hearing, is that the appellant's Noise Impact Assessment²⁵ is not sufficiently comprehensive to enable a clear understanding of the degree of the scheme's impact, nor to establish the necessary mitigation measures in respect of the adjacent Marks and Spencer's (M&S) service yard. The Council highlights that there are no

²² Daylight and Sunlight Assessment, MLM Consulting Engineers Ltd, Conclusions

²³ Paragraph 7.23, Council's Hearing Statement

²⁴ Paragraph 7.30, Council's Hearing Statement

²⁵ Noise and Air Quality Assessment, Rev A (October 2019) and Rev B (February 2020) M-EC Acoustic Air

existing planning restrictions on the operation of the M&S service yard, and this could potentially cause problems in respect of future residents. The Council also draws attention to a 'Retiming Deliveries Project in 2019'²⁶ which identified 'extremely noisy' activities with HGVs arriving and reversing (using 'beep-beep' alarms) at the M&S service yard²⁷.

31. I am aware that the Framework²⁸ states that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. The Framework is clear that where the operation of an existing business could have a significant adverse effect on new development, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.
32. I accept that the appellant's noise surveys in respect of the M&S Yard were rather limited in scope in terms of understanding the extent of potential noise sources arising in respect of the M&S Yard. Importantly, however, the Council accepted at the Hearing that any noise impacts could be capable of adequate mitigation using orthodox measures, after the appropriate surveys had been undertaken and this could be secured by condition²⁹. Again, it is important to remember that Policy STC6 envisages residential development on this site, so the principle of such a land use in proximity to other commercial uses cannot be in dispute. Overall, I am satisfied that an appropriately worded condition would adequately protect future residents from adverse noise impacts, thereby avoiding conflict with Policy 29 of the Local Plan.
33. Air Quality: Policy 34 (d-f) of the Local Plan requires development to seek to contribute towards the achievement of national air quality objectives as far as possible and support the objectives of the Council's Air Quality Action Plan. The Policy also says that all development proposals should be at least 'air quality neutral' with respect to particulates and nitrogen oxides. The refusal ground states the Council is not satisfied that the proposal would be 'air quality neutral'.
34. The appeal site lies within a Borough-wide Air Quality Management Plan (AQMA) which was designated in 2013. The development proposes no parking for residents and so essentially would be 'car free'. Indeed, the appellant's Air Quality Assessment records that it is unlikely to generate any significant traffic movements and that the impact of the development on ambient air quality would be negligible in that regard³⁰. The appellant's Assessment also states that the Council's air quality reviews do not indicate that existing residences in the vicinity of the appeal site experience adverse levels of pollution, and so the same would apply to new residences. It is also stated that the ambient concentrations of local traffic emissions are below the air quality objectives. The Assessment also states that effects arising during demolition, earthworks and construction phase would present a medium risk of dust annoyance but this could be addressed through mitigation measures secured by condition. The Council has not presented any specific data to contradict these conclusions.
35. At the Hearing, the Council's case on air quality appeared to relate more narrowly and specifically to emissions arising from any heating and hot water

²⁶ This related to the alteration of the existing Traffic Management Order regarding times of deliveries

²⁷ Noise Abatement Society Qualitative Survey, October 2019

²⁸ Paragraph 187

²⁹ The Council confirmed at the Hearing that a condition was acceptable

³⁰ Using Environmental Protection UK (EPUK) & Institute of Air Quality Management (IAQM) Guidance

system within the development³¹. The Council's criticism is that scant detail has been provided by the appellant on this issue for it to make a proper or robust assessment, and that such information should be provided 'up front'. However, I am satisfied that different technologies are available that seek to achieve air quality neutrality in terms of heating and hot water provision. I see no reason why such matters could not satisfactorily be resolved by way of suitably worded conditions to ensure full compliance with Policy 34 of the Local Plan regarding 'air quality neutrality'. As such, I do not consider that this is a reasonable basis for withholding planning permission.

Planning Obligation

36. A planning obligation has been completed by the parties dated 13 April 2021. This would secure a 'carbon offset' contribution (£68,040); a clause to ensure a 'car free' development by restricting future occupiers (other than blue badge holders) from applying for parking permits within the Sutton Town Centre Controlled Parking Zone; a requirement to submit for approval a 'Travel Plan Statement' (to include measures to encourage the use of sustainable modes of transport) and the payment of a travel management monitoring fee (£2,000). Although the Council has accepted the proposal cannot currently viably provide affordable housing, the obligation also contains provisions that in certain circumstances require 'early stage' and/or 'late stage' viability reviews that would potentially require the provision of affordable housing should it become viable to do so in the future.
37. I have no reason to believe that the formulas and charges used by the Council to calculate the various contributions and provisions of the obligation are other than soundly based. I am satisfied that the provisions of the obligation are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework³² and Community Infrastructure Levy Regulations³³. I have taken the planning obligation into account in my deliberations.

Planning Balance and Overall Conclusions

38. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise³⁴. The Framework also requires that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by economic, social and environmental dimensions and the interrelated roles they perform.
39. The scheme would secure a high quality, modern housing and commercial development for which there is a clear need, in a highly sustainable location. The Framework is clear that proposals should promote the effective use of land in meeting the need for homes and other uses; make as much use as possible of previously-developed or 'brownfield' land; promote and support the development of under-utilised land and buildings; and boost the supply of housing. The scheme would achieve all these Framework aims.

³¹ Council's Hearing Statement (Paragraphs 7.56-7.58) and Closing Statement

³² Paragraph 57

³³ Regulation 122

³⁴ Section 38(6) of the Planning and Compulsory Purchase Act 2004 & Section 70(2) of the Town and Country Planning Act 1990

40. The proposal would be architecturally of high quality and employ a varied and attractive palette of materials. It would significantly improve an area that the Council itself describes as poor character. It would also preserve the character of the adjacent Conservation Area. The proposal would accord with the allocation within the Local Plan as envisaged by Policy STC6. This policy specifically envisages a building up to 7 storeys in height, with active ground floor frontages, and which would contribute to a residential neighbourhood in the north of the town centre.
41. The Council has accepted the scheme cannot support affordable housing and I see no sound reasons to withhold permission on grounds of deliverability. I have considered the effect on living conditions of occupiers of adjacent buildings in terms of daylight and privacy and do not consider that the Council's objections are sufficiently well founded to cause the appeal to fail on these grounds. In terms of noise impacts, the Council has accepted that a condition would address its concerns. Similarly, a condition could be imposed to ensure appropriate technological solutions are employed to secure air quality neutrality.
42. The Framework states that proposals which accord with an up-to-date development plan should be approved without delay. I am satisfied the proposals would accord with the development plan as a whole, including Policies 8, 28, 29, 34 and STC6 of the Local Plan; and Policies D3, D4, D13, D14 and S1 1 of the London Plan. There are no material considerations to indicate that permission should be withheld. Accordingly, I conclude the appeal should be allowed, subject to the conditions set out below.

Conditions

43. I have reviewed the agreed list of suggested conditions set out in the Statement of Common Ground in the light of the discussion at the Hearing and advice in the Planning Practice Guidance. The Framework is clear that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects³⁵. Where necessary I have reworded the conditions for simplicity and have amalgamated some to avoid duplication. The numbers in brackets relate to the conditions in the schedule.
44. A commencement condition is necessary to comply with the relevant legislation (1). A condition requiring compliance with the approved plans is necessary for certainty (2). A condition requiring approval of external materials, including details of balcony screens, is necessary to ensure a high quality scheme and to protect the privacy of existing residents (3).
45. Conditions requiring a Construction Logistics and Management Plan, and registration of the site on the Non-Road Mobile Machinery (NRMM) database are necessary to minimise disturbance to local residents, to ensure efficient traffic flow and to mitigate air pollution during the construction phase (4, 5). Conditions relating to landscaping, biodiversity and habitat provision, including ongoing management, are necessary to ensure high quality landscaping and to enhance the biodiversity of the site (6, 7, 8, 9, 10). Conditions relating to

³⁵ Paragraph 56

- potential site contamination are necessary to protect the health of future occupiers (11, 12, 13).
46. As the site is located over a principal aquifer and groundwater source protection zone, conditions are necessary to protect these features (14, 15). Conditions are necessary to ensure adequate drainage of the scheme and to prevent flooding (16, 17). A condition is necessary to ensure that the development is 'air quality neutral' (including its heating and hot water provision) to protect environmental health and to control air pollution (18). Conditions relating to any restaurant / café use requiring details of the extract ventilation system, hours of operation and sound transmission reduction measures are necessary to protect the living conditions of nearby residents (19, 20). For similar reasons a delivery and servicing plan is necessary in respect of the commercial floorspace (21).
47. Conditions are required to ensure a sustainable and energy efficient form of development (22, 23). A condition requiring measures to achieve 'Secure by Design' status is necessary to minimise crime (24). A condition is necessary to ensure adequate accessibility for future occupiers of the residential units, including wheelchair users, and their changing needs over time (25). A condition is necessary to ensure items of archaeological interest are adequately dealt with (26). Conditions are necessary relating to noise mitigation to protect the living conditions of future residents (27, 28, 29). Conditions relating to waste management provision and cycle storage are necessary to ensure these matters are appropriately addressed (30, 31). A condition requiring removal of all redundant accesses and crossover is necessary in the interest of highway safety and good design (32).
48. A number of the conditions relate to pre-commencement activities. In each case, the requirement of the condition is fundamental to make the scheme acceptable in planning terms. Subject to the imposition of these conditions, I conclude that the appeal should be allowed.

Matthew Nunn

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Matthew Henderson	of Counsel, Landmark Chambers
Maurice Fitzgerald	Capreon Asset Managers for the Rachel Charitable Trust
Gary Thomas	Planning Works Ltd
Graeme Rowe	Stanley Bragg
Vesal Tebyanian	Stanley Bragg
Nick Bignall	Turner Morum
Chris Neeves	MLM Group
Daniel Newbery	M-EC Acoustic Air
Michael Forsdyke	M-EC Acoustic Air

FOR THE COUNCIL

Iain Williams	LB Sutton, Senior Planning Officer
James Bullough	Aspinall Verdi
Stuart Cook	Aspinall Verdi
Richard Odell	LB Sutton
Gavin Chinniah	LB Sutton (Observing only)

HEARING DOCUMENTS

1. Schedule of London Plan 2021 Policies relevant to the appeal
2. Documents relating to development at r/o Times Square Shopping Centre, High Street, Sutton
3. Information relating to Sutton Air Quality Management Area
4. Closing Statement of the Council
5. Closing Statement of the appellant
6. Planning Obligation dated 13 April 2021

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 6710-1101-P1, 6710-1201-P1, 6710-1202-P1, 6710-1203-P1, 6710-1204-P1, 6710-1205-P1, 6710-1206-P1, 6710-1207-P1, 6710-1208-P1, 6710-1209-P1, 6710-1210-P1, 6710-1211-P1, 6710-1212-P1, 6710-1213-P1, 6710-1214-P1, 6710-1250, 6710-1301-P2, 6710-1302-P2, 6710-1303-P1, 6710-1304-P1, 6710-1305-P1, 6710-1306-P1, 6710-1401-P1, 6710-1601-, 6710-1602-P1.
- 3) Prior to the commencement of the superstructure of the building, details of the materials (including samples where appropriate) to be used on the external surfaces of the building (including bricks, cladding, windows, doors, and full details of balcony/privacy screens) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried in accordance with the approved details and permanently retained thereafter.
- 4) No development shall take place, including demolition and site clearance, until a Construction Logistics and Management Plan (CLMP) has been submitted to and approved in writing by the Local Planning Authority. The CLMP shall include: details of loading and unloading of plant and materials; details of storage of plant and materials; measures for traffic management (including routing) so as to minimise the impacts of construction traffic on the highway; means to prevent deposition of mud or other substances on the highway; details of boundary hoardings to be provided; provisions to ensure that works during the demolition / construction phase that generate noise beyond the site boundary shall be only carried out between the hours of 0800 hrs and 1800 hrs Mondays to Fridays, and between 0800 hrs and 1300 hrs on Saturdays and at no time on Sundays and Bank Holidays; means to control dust and emissions to air; means to control noise and vibration. The CLMP should be in accordance with the Greater London Authority's Supplementary Planning Guidance 'Control of Dust and Emissions during Demolition and Construction'. The approved CLMP shall be adhered to throughout the demolition and construction period.
- 5) No development shall take place until the site has been registered on the Non-Road Mobile Machinery (NRMM) database. Details of any non-road mobile machinery to be used on site during construction of the development with net power between 37kW and 560kW shall demonstrate compliance with the standards of the Low Emission Zone for NRMM.
- 6) Prior to the occupation of the development hereby permitted, details of hard and soft landscaping for the communal gardens on the plinth and roof terraces (and any other landscaped areas within the scheme) shall be submitted to and approved in writing by the Local Planning Authority. All hard and soft landscaping and tree planting shall be implemented in accordance with the approved details, and in accordance with a timetable agreed with the Local Planning Authority, and shall be permanently

- retained thereafter. Any trees or plants which within a period of five years after planting die, are removed or are seriously damaged or defective shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written approval to any variation.
- 7) No development shall take place until documentary evidence has been submitted to and approved in writing by the Local Planning Authority to show that the development will achieve an improved Green Space Factor (GSF) score of at least +0.2 compared to the baseline GSF score for the site prior to redevelopment. The development shall be carried out in accordance with the approved details and permanently retained thereafter.
 - 8) Prior to the development rising above the damp proof course, a Biodiversity Enhancement Plan (BEP) shall be submitted to and approved in writing by the Local Planning Authority. This should take the form of a 'No Net Loss' and 'Net Gain evaluation', working to the provided methodology and in accordance with BS 42020:2013. Full details of habitat creation, aftercare, management and monitoring of enhancements shall be included in the BEP. It shall include: details of substrate-based biodiverse/bio-solar roofs; a scheme for nesting features on the building including multi-chamber boxes or integrated bricks suitable for a variety of bird species; and numbers and details of each box / brick type, and locations including height above ground and the nearest external lighting. The development shall be built in accordance with the approved scheme and thereafter retained for the lifetime of the development.
 - 9) On completion of all landscaping and green infrastructure, a 'Statement of Conformity' shall be submitted to and approved in writing by the Local Planning Authority. The Statement of Conformity will be signed by a suitably qualified ecologist and include evidence to certify that the details for each habitat / feature are in accordance with the previously submitted information.
 - 10) Prior to the occupation of the development hereby approved, a management plan for the communal amenity space within the scheme shall be submitted to and approved in writing by the Local Planning Authority. It shall be implemented as approved.
 - 11) No development shall take place until a scheme to deal with the risks associated with contamination of the site has been submitted to and approved in writing by the local planning authority. The scheme shall include: (a) A site investigation scheme based on the Phase 1 Report to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site; (b) The results of the site investigation and detailed risk assessment referred to in (a) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken; (c) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (b) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The scheme shall be implemented as approved.

- 12) If during the course of construction, contamination not previously identified is found to be present at the site, then no further works shall be carried out until a remediation strategy detailing how this unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the Local Planning Authority before works resume.
- 13) Prior to occupation of the development hereby permitted, a Verification Report demonstrating the completion of the works set out in the approved remediation strategy, and the effectiveness of the remediation, shall be submitted to and approved in writing by the local planning authority. The Report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a 'long-term monitoring and maintenance plan' for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, if appropriate, and for the reporting of this to the Local Planning Authority. Any 'long-term monitoring and maintenance plan' shall be implemented as approved.
- 14) No drainage systems for the infiltration of surface water drainage into the ground shall take place unless approved in writing by the Local Planning Authority. Consent may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to 'Controlled Waters'. The development shall be carried out in accordance with the approved details.
- 15) No piling or any other foundation designs using penetrative methods shall take place unless approved in writing by the Local Planning Authority. Consent may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
- 16) Subject to the provisions of Condition 14, no development shall take place until a scheme for the management of surface water runoff has been submitted to and approved in writing by the Local Planning Authority. The scheme shall identify appropriate site drainage and flood risk management measures, including sustainable drainage systems, in order to manage surface water runoff as close to its source as possible in accordance with the Mayor of London's drainage hierarchy. The development shall be carried out in accordance with the approved scheme and be permanently retained thereafter.
- 17) Prior to the occupation of the development hereby approved, a drainage management and maintenance plan shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage system, including all its components, shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

- 18) Notwithstanding the provision of previous reports and submitted evidence, no development shall take place until an Air Quality Assessment to include measures ensuring the development is 'Air Quality Neutral' has been submitted to and approved in writing by the Local Planning Authority. This shall include details of energy use, including heating and hot water provision within the scheme. All agreed measures shall be fully implemented before the development is occupied. The assessment shall have regard to the most recent air quality predictions and monitoring results from the Council's Review and Assessment process, the London Air Quality Network and the London Atmospheric Emissions Inventory. The assessment shall include all calculations/baseline data and be set out so that the Local Planning Authority can fully audit the report and critically analyse the content and recommendations. In the event development is found to fail its 'Air Quality Neutral' assessment, a scheme for air pollution mitigation measures shall be submitted to and approved by the Local Planning Authority prior to development starting. This shall include mitigation for where air quality neutral transport and building assessments do not meet the relevant benchmarks. Any approved mitigation scheme shall be fully implemented in accordance with details approved under this condition before any part of the development is first occupied.
- 19) Should any part of the ground commercial floorspace be occupied by a restaurant or café use, details of the proposed extract ventilation systems shall be submitted to and approved in writing by the Local Planning Authority. Details shall include specifications of extraction hood, internal fan, flexible couplings, three-stage filtration (grease filters, pre-filters and activated carbon filters) ducting and anti-vibration mountings. The approved scheme shall be installed in accordance with agreed details prior to the commencement of any such use and permanently retained and maintained for its duration. Any restaurant or café use shall not be occupied until details of the operational hours have been submitted to and agreed in writing by the Local Planning Authority. The uses shall not operate outside the agreed operational hours.
- 20) Prior to any use of the ground floor commercial unit as a restaurant/café, a scheme detailing sound transmission reduction measures to be installed between the ground floor use and the residential units immediately above shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be installed prior to the development being occupied and permanently retained thereafter.
- 21) Prior to the occupation of the commercial floorspace hereby permitted, a full Delivery and Servicing Plan (DSP) for that floorspace shall be submitted to and approved in writing by the Local Planning Authority. The approved DSP shall be adhered to for the duration of the use.
- 22) The commercial floorspace of the development hereby permitted shall achieve a BREEAM rating of 'Excellent'. Appropriate certification / documentation issued by the BRE (or equivalent authorising body) must be submitted to the Local Planning Authority prior to occupation of the commercial floorspace to show the 'Excellent' rating has been achieved. All measures shall be retained for the duration of the development's existence.

- 23) Prior to first occupation of the development hereby permitted, a completed Water Efficiency Calculator for the residential units must be submitted to and approved in writing by the Local Planning Authority to show that internal potable water consumption for each residential unit will be limited to 110 litres per person per day based on the Government's national calculation method for water efficiency for the purposes of Part G of the Building Regulations.
- 24) No development shall take place until details to show how the development complies with the 'Secured by Design' scheme have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be carried out as agreed prior to the occupation of the building and shall be permanently retained thereafter.
- 25) Forty-three (90%) of the residential units hereby permitted shall be designed and constructed in accordance with Building Regulations Part M4(2) ('accessible and adaptable dwellings'). Five (10%) of the residential units hereby permitted shall be designed and constructed in accordance with Building Regulations Part M4(3) ('wheelchair user dwellings'). Evidence from an approved building control inspector demonstrating compliance with these requirements should be submitted to and approved in writing by the Local Planning Authority prior to occupation. The development shall be retained in accordance with these requirements permanently thereafter.
- 26) No development shall take place within the site until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation (WSI) which has been submitted to and approved by the Local Planning Authority. This shall include the methodology of site evaluation, recording, post investigation assessment / analysis / dissemination and the nomination of a competent person or organisation to undertake the agreed works. No development shall take place other than in accordance with the agreed WSI.
- 27) No development shall take place until an Acoustic Report has been submitted to and approved in writing by the Local Planning Authority. The report shall assess the existing acoustic climate at the site and in particular, commercial plant surrounding the site and activity in the adjoining service bay and its potential to affect future occupiers of the development. If the assessment indicates that noise from these sources is likely to adversely affect occupiers, the report shall set out detailed mitigation measures to avoid any adverse impact. The report shall be undertaken by a suitably qualified acoustic consultant/engineer and shall take into account the provisions of BS 8233:2014 *Guidance on sound insulation and noise reduction for buildings* and BS 4142:2014 *Methods for Rating Industrial and Commercial Sound*. Where the guidance levels under BS 8233:2014 cannot be met and/or the BS 4142:2104 assessment shows an indication of adverse impact with windows open, appropriate acoustic ventilation should be provided so that the room can be sufficiently ventilated. The acoustic performance of any passive vent, variable speed mechanical air supply unit or whole house ventilation must be sufficient to ensure that the noise level standards given above are not compromised.

- The approved noise mitigation measures shall be implemented in accordance with the agreed details prior to occupation of the development and be permanently retained thereafter.
- 28) No development shall take place until measures to ensure that the rating level of any plant will be at least 5dBA lower than the existing background noise level at any given time of operation. The noise levels shall be measured or predicted 1m externally to any window at the nearest residential facade. Measurements and assessment shall be made in accordance with BS 4142:2014. The development shall be carried out as approved.
- 29) Details of a 'Welcome Pack' to be provided to all residential units shall be submitted to and agreed in writing by the Local Planning Authority prior to their first occupation. The 'Welcome Pack' shall include details of the noise attenuation measures installed, and guidance on the proper and effective use of the provided measures, including details regarding any servicing and maintenance.
- 30) Prior to occupation of the development, a waste management plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall demonstrate how refuse and recycling collection shall operate on site. The measures contained within the approved management plan shall be implemented on site prior to occupation and be permanently retained thereafter.
- 31) Prior to the occupation of the development hereby permitted, cycle storage shall be provided in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and retained permanently for the life of the development.
- 32) Prior to the occupation of the development hereby approved, all redundant accesses and crossovers shall be reinstated and returned to a raised kerb in accordance with a scheme to be approved in writing by the Local Planning Authority.