



## Appeal Decision

Hearing Held on 18 June 2019

Site visit made on 19 June 2019

**by Tim Wood BA(Hons) BTP MRTPI**

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

**Decision date: 15 July 2019**

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### **Appeal Ref: APP/P5870/W/18/3205215 324 - 346 High Street, Sutton SM1 1PR**

- 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 Mizen Properties Ltd against the decision of the Council of the London Borough of Sutton.
  - The application Ref B2017/78658, dated 22 December 2017, was refused by notice dated 17 April 2018.
  - The development proposed is demolition of the existing former public house at 342-346 High Street and erection of a 6 storey plus basement building to provide 145 sqm of flexible A1/A2/A3 floor space at ground floor and 30 residential units (13 x 1 bedroom, 14 x 2 bedroom and 3 x 1 bedroom) on the upper floors; extension of retail floor area within 340-342 High Street, resulting in the loss of parking at 324-340 and combined provision of 65 car parking spaces for both sites; cycle storage and alteration to vehicle access.
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### **Decision**

1. The appeal is dismissed.

### **Procedural Matters**

2. I made unaccompanied site visits prior to and immediately following the Hearing.

### **Main Issues**

3. The main issues in this appeal are;
  - Whether the proposed design and layout of the proposal are acceptable
  - Whether the proposal includes an unacceptable number of car parking spaces
  - Whether the proposed commercial unit at 342-346 High Street would be viable
  - Whether the scheme as a whole provides sufficiently for affordable housing.

### **Reasons**

#### ***Design and Layout***

4. The existing public house is part single storey and part 2 storeys in height. The single storey front element is built up to the front boundary of the site. The

proposal would be built up to the same forward line, that is at the rear edge of the pavement. This would represent a considerable increase in the built form when compared to the existing modest building, but one that is comparable to the already completed development within the larger appeal site.

5. The Council's concern in this respect is that the forward siting of the building, along with the design of the northern elevation, would mean that it would appear large and blank and would have a negative effect on the character of the area. The fact that the neighbouring block to the north, Helena House, is set back would serve to make this elevation more prominent.
6. Firstly, I agree that this large and blank elevation would have an unacceptably negative effect on the street-scene, in this prominent position. I accept that it would only be seen from one direction but its height and depth would combine to have a significant and detrimental effect on the street-scene. It would represent poor design, contrary to Policy 28 of the Sutton Local Plan 2018 (LP). The Council indicates that it is understood that no windows or balconies have been provided in this elevation as they would have given rise to overlooking of Helena House, and vice versa.
7. The appellant has drawn my attention to the fact that Helena House is an allocated site within the LP (STC 19). The appellant suggests that a redevelopment of Helena House would be likely to result in a building that would obscure the northern elevation of the appeal scheme, and so any effect would be screened or not relevant. However, whilst the site is allocated in the LP, there is no assurance that it will be redeveloped and I am not informed of any moves to bring this about. In addition, the LP allocation states, amongst other things, that any development scheme for Helena House should pay particular regard to providing high quality public realm improvements. Taking these points together, I consider that I cannot rely on the redevelopment of Helena House to act as a foil for the proposal. The appellant also suggests that a condition could appropriately require a scheme for alterations to be made to the northern elevation. In my judgement such a condition would be vague and could not be relied upon to result in an acceptable outcome, given the more fundamental nature of the objection to the appeal scheme. In addition, I find the appellant's suggested alteration in this respect, contained within the appeal documents, would fail to provide an acceptable level of detail and interest required to make this elevation acceptable.
8. The proposed residential access to the flats within 342-346 would be recessed behind the line of the remainder of the building and within part of the under-croft. This would also seem to serve a likely pedestrian route for the car parking which would serve the built, but not yet occupied, retail unit. The scheme also includes car parking for the flats within the constructed building at No 324-340, within the proposed basement. This would mean that residents within those flats would have to use the proposed stairs/lift in the proposed building at 342-346, into the residential lobby of the new building, exit the building and cross the vehicle entrance before entering the residential entrance to 324-340. From what I have seen and after considering the proposal in detail, it seems to me that these arrangements would not provide safe and welcoming entrances to the building which would be neither convenient and would not provide an environment which does all it can to exclude the possibility of crime and anti-social behaviour. I have noted the appellant's suggested addition of glazing in the south elevation of the residential entrance

and whilst this may be an improvement, it would not overcome this issue, in my view. I consider that these aspects of the proposal would conflict with the requirements of Policies 7.4 and 7.6 of the London Plan and Policy 28 of the LP.

9. In relation to its design, the Council also consider that the proposed commercial unit (for A1/A2/A3 use) would not be flexible and robust, as required by Policy 28 of the LP. The unit would have a small floor area and a single entrance which would be within its frontage. The appellant has indicated that they already have a tenant for this unit. Whilst I can understand the Council's concerns relating to the possible inconvenience of a lack of a servicing entrance, I accept the appellant's point that this would be likely to take place from within the car parking area within the site and so would not give rise to an insurmountable problem.

### **Car Parking**

10. Policy 37 of the LP states that new developments will be expected to provide parking in accordance with the Council's restraint-based maximum parking standards, taking account of the location of the site in relation to public transport, and the need to deter unnecessary car use, among other things. It adds that, in town centres proposals involving limited or no parking will be favourably considered. The Council states that the maximum provision for the reconfigured retail unit is 28 spaces and the proposed provision of 42 is 50% higher (additional/replacement parking is proposed within the site and basement for the residents of the existing flats and no parking is proposed for the new flats). The standards contained within the London Plan would indicate a maximum provision of 37 spaces for the retail unit.
11. The appellant states that the car parking size is a requirement of a specific food retailer who would occupy the ground floor within the existing, reconfigured building. The appellant suggests that, when seen within the wider context, the proposed use of the unit for food retailing would simply re-direct existing food shoppers from other food stores, who already make car journeys. Thus, it is argued, the proposal would not give rise to any additional car journeys but would just mean that they took place in a different location.
12. The appeal site is within the Sutton Town Centre with a PTAL rating of 5 which is very good. The Council states that the aim of their restraint-based policies is to reduce reliance on the private car and to encourage the use of more sustainable modes of transport. They add that this aim is fully consistent with the NPPF and the emerging draft London Plan.
13. I have taken account of the appellant's arguments in relation to the PTAL rating of the wider area and to the parking provision at other food-retail outlets in the area. My view is that the accessibility of the site is considered to be very good, it is within the Town Centre and this is not diluted by the fact that other areas have lesser scores or access to public transport. The fact that other retail units in other locations have different parking provisions is perhaps reflective of the times within which they were approved and constructed, perhaps when restraint-based policies were not in place.
14. In relation to the appellant's argument about the displacement of car journeys rather than the overall reduction, it seems to me that it must be accepted that the achievement of the aims to provide for and encourage more sustainable forms of transport is an incremental process and an individual planning

proposal can only have a limited influence by itself. If the appellant's argument about providing this amount simply to suit the individual retailer were to be accepted, then very little or no progress would be made in this respect and perhaps a retrograde effect would result.

15. Therefore, whilst I have taken account of the appellant's arguments, I find that the provision of car parking for the reconfigured retail unit would amount to a breach of the requirements of Policy 37 of the LP which would fail to take any steps to encourage the use of alternative and more sustainable modes of transport, within this accessible location.

### ***Viability of the new commercial unit***

16. The nature of the proposed commercial unit for uses A1/A2/A3 has been described above. The Council considers that the nature of its design and configuration would mean that it would prove unviable and so would result in a unit which would adversely affect the viability of the area.
17. The appellant has indicated that they have a prospective tenant for the unit. This company's interest has meant that no further marketing of the proposed unit was undertaken and so the Council's reference to a comprehensive or additional marketing information cannot be met (and is unnecessary, in the appellant's view).
18. It seems to me that the presence of a prospective tenant is a good indicator of whether the unit is suitable to an end user. The Council's criticisms about servicing have been dealt with above and I find that this would not impose an unreasonable restriction on the commercial viability of the unit. Therefore, I consider that there is no overriding fault with the proposed unit which would make it commercially impractical to use. As a result, I find no conflict with Policy 28 of the LP in this respect.

### ***Provision for Affordable Housing***

19. London Plan Policy 3.12 and Policy 8 of the LP require residential developments, or mixed use developments, to provide an appropriate level of affordable housing. The Council's policy seeks to achieve 35% of affordable housing but acknowledges that a scheme's viability is a determining factor. The proposal is to provide 3 (10%) units of affordable housing, whilst the Council contends that such a reduction is not justified by the viability of the scheme.
20. There is a considerable amount of evidence in relation to viability submitted by the appellant and the Council but the main differences have been distilled by the main parties and I shall concentrate on these determining factors.
21. Perhaps the key difference between the parties relates to the Benchmark Land Value (BLV) of the site and this is split into its various elements. Firstly, the existing retail element (referred to as retail A) within the site as it exists; comparisons have been made by both parties to the old Gas Works site at 287-309 High Street, as a comparable. The appellant's evidence tempers the Council's claims in relation to the period of vacancies and incentives offered at the Gas Works site and also indicates that the units were quite likely to have been sold at a lower price due to the ownership company winding up. Therefore, taking account of these factors, it would seem that a direct

- comparison with the Gas Works site may not be appropriate in terms of value and yield. Other comparisons have been made by the appellant taken from the surrounding area and these which generally support the appellant's value of the retail A. In terms of the likely rent, the appellant has compared this to a similarly sized unit at the Gas Works site, although he acknowledges that retail A is on a slightly inferior position and I agree with his assumption as to its likely level and potential for growth.
22. In terms of yield and the comparison with other units nearby, the yields referred to would have been influenced by the reduced values achieved and so yields would have been correspondingly higher. I have also taken account of the difference in the yields suggested by the Council in relation to retail A and the proposed reconfigured unit (retail B); whilst some difference maybe expected, the Council's suggested difference is large and, in my view, supports the view that their opinion of the yield for retail A is unrealistic. Taking these points together, I tend to agree with the appellant's figures in relation to retail A.
23. In relation to the site of the vacant public house which would accommodate retail C and residential units, the Council has used the Existing Use Value (EUV) which is heavily influenced by the very dilapidated state of the existing building. However, the appellant points to the fact that the site has an obvious value in terms of its Alternative Use Value (AUV) which, as a matter of principle, is not contested by the Council. The Planning Practice Guidance (PPG) indicates that AUV can be informative in establishing a BLV. Having accepted this, it seems reasonable to me to accept the Appellant's view, rather than that of the Council.
24. In terms of the landowner's premium, the appellant has used 20% within the BLV calculations. From what I have heard and from the evidence submitted, I accept the points made by the appellant in relation to the justification for a landowner's premium of the amount suggested. Therefore, overall I accept the appellant's figures in relation to BLV.
25. In addition to the main issue above, evidence is submitted in relation to residential values. These differ and whilst the Council indicates that prices have remained stable since 2016/17, the appellant indicates that prices have reduced. I consider that the submitted evidence supports the appellant's view that prices have reduced since the initial viability appraisal and that this should now be reflected within the accepted values.
26. In relation to the overall return for the developer, the Council's general position is that, for the purposes of a viability exercise, these should be: 17.5% of gross development value (GDV) market units; 6% of GDV on affordable units; 20% on cost for commercial units. The appellant indicates that the Council's profit assumptions would equate to 15.59% on total GDV. The appellant has stated that they consider it reasonable to use a profit objective of 22.5% on total costs which translates as around 20% of the total GDV and they indicate that this is supported by the PPG. The appellant also sets out that, in their view, market conditions would presently dictate that a higher risk and so a higher return should be used and expected.

27. Therefore overall, I accept the appellant's submissions in relation to viability. Whilst this would indicate that the 3 proposed units are more than is required, the appellant is willing to include these within the appeal scheme. As a result, I conclude that the scheme could not support any additional units and its provision for affordable housing is reasonable.

### ***Other Matters and Planning Balance***

28. The appeal scheme would bring about new homes in an accessible location, with an element of affordable homes. It would bring an occupier to the existing ground floor and would also involve the removal of the public house which is an eyesore. I recognise these as positive aspects and take account of them and all others set out by the appellants, including the provisions within the Planning Obligation. However, I consider that the scheme would have a considerably negative effect on the character of the area as a result of the poor design of the northern elevation, as set out. This would be contrary to Policy 28 of the LP and Policies 7.4 and 7.6 of the London Plan. Whilst I recognise that the Council agree that this is an area where buildings of this height may be acceptable, I consider that the specific issue here could be resolved without prejudice to that matter.

29. In addition, I agree with the Council, that the design of the residential entrance, the location of parking and the routes through the site would represent poor design that raises further conflict with the policies referred to above.

30. The scheme includes car parking that would be significantly in excess of the Council's maximum parking standards, as well as those in the London Plan. In doing so it fails to acknowledge the need to seek to encourage the use of more sustainable transport and is contrary to Policy 37 of the LP.

31. Although I have agreed with the appellant in relation to some aspects of the scheme, in my judgement, the negative aspects of the proposal are not outweighed by its benefits.

### **Conclusions**

32. For the reasons set out above, the appeal is dismissed.

*S T Wood*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

A Tabachnik QC  
J Cunnane  
A Richards  
M Tomasi  
J Brown  
C Hereward  
J Baker  
N Bradshaw

### FOR THE LOCAL PLANNING AUTHORITY:

I Williams  
G Chinniah  
R De Castro  
S Cook  
J Bullough  
H Bokhari

### INTERESTED PERSONS:

Cllr M Heron

### DOCUMENT SUBMITTED AT THE HEARING

1. Technical note relating to other retail units
2. London Plan parking standards table 6.1
3. Extract from PPG
4. Schedule of conditions
5. Appeal decision APP/U5930/W/18/3204281 (not relied on)
6. Planning Obligation (submitted after the close of the Hearing).