



# Appeal Decision

Inquiry opened on 8 April 2008

Site visit made on 9 April 2008

by **Mike Moore BA(Hons) MRTPI MCIT MIHT**

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

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Decision date:  
8 May 2008

## Appeal Ref: APP/P5870/A/07/2061753

### 229-245 Carshalton Road, Carshalton, SM5 3PZ

- 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 Linden Homes against the decision of the Council of the London Borough of Sutton.
- The application Ref C2007/58101/FUL, dated 6 July 2007, was refused by notice dated 28 September 2007.
- The development proposed is the demolition of existing buildings and redevelopment to provide ground floor commercial/retail, 48 new residential apartments and associated parking and landscaping.
- The Inquiry sat for 2 days on 8 and 9 April 2008

## Decision

1. I allow the appeal, and grant planning permission for the demolition of existing buildings and redevelopment to provide ground floor commercial/retail, 48 new residential apartments and associated parking and landscaping at 229-245 Carshalton Road, Carshalton, SM5 3PZ in accordance with the terms of the application, Ref C2007/58101/FUL, dated 6 July 2007, and the plans Ref. P01E, P02D, P03C, P04A, P05, P06D, P07D, P08C, P09D and P10C, subject to the conditions set out in the annex to this decision.

## Preliminary Matters

2. The appellants submitted amended drawings Ref. P01E, P02D, P03C, P04A, P06D, P07D, P08C, P09D and P10C which they wished to be substituted for corresponding plans that were part of the application determined by the Council. The revised drawings were seeking to address some of the Council's reasons for refusal but the general size and scale of the proposed development was unaffected. I considered the changes to be minor amendments and that no interests would be prejudiced by my acceptance of the revised drawings. In that context, I have determined the appeal on the basis of the amended plans. The appellants also submitted an additional plan Ref. P20A showing cycle store details but during the course of the Inquiry agreed that this was illustrative and I have treated it accordingly.
3. During the Inquiry I was presented with a unilateral undertaking by the appellants relating to affordable housing, highway works and financial contributions to education, sport and recreation, public open space, private amenity space and play space. This was acceptable to the Council and on that basis it withdrew its reason for refusal 7. However, a signed copy of the

undertaking was not submitted by the close of the Inquiry. I considered that there was a reasonable prospect that the necessary signatures would be obtained in a short time span and I agreed that the signed version could be provided within 7 working days. The signed copy was duly submitted and I have taken it into account in determining the appeal.

## **Main Issues**

4. The main issues are:
  - The effect of the proposed development on the character and appearance of the area, including on the adjacent Carshalton Village Conservation Area, and on the setting of nearby listed buildings;
  - The effect of the proposed development on the living conditions of nearby residents in terms of outlook and overlooking; and
  - Whether the proposed development would provide acceptable living conditions for future occupants in terms of outlook and overlooking.

## **Reasons**

### Character and Appearance

5. The appeal site is situated at the corner of Carshalton Road and Shorts Road. There is a 2-storey terrace on the Carshalton Road frontage with shops on the ground floor and a mixture of residential and commercial units above. This is linked to a further 2-storey building at the Shorts Road corner. To the rear of the site are redundant warehouse buildings originally constructed as a distribution depot.
6. The appeal proposals involve the clearance of the site and the construction of a part 3-storey, part 4-storey L-shaped building comprising three linked residential blocks containing 48 flats. On the Carshalton Road frontage the flats would be over a row of ground floor units for commercial or retail use. Car parking and a landscaped amenity area would be to the rear. The site comprises previously developed land and the Council had no objection in principle to a mixed use redevelopment.
7. The residential part of the proposed development would achieve a density of some 478 habitable rooms per hectare (hrh). Policy 3A.3 of the London Plan (LP) seeks to ensure that development proposals achieve the maximum intensity of use compatible with, amongst other things, local context, good design principles and public transport capacity. The site has a Public Transport Accessibility Level (PTAL) of 3 or 'moderate', with an adjacent bus stop and regular services on Carshalton Road and railway stations within walking distance. LP Table 3A.2 identifies density ranges at PTAL 3 for suburban locations of between 150 and 250 hrh and for urban locations of between 200 and 450 hrh.
8. The main parties differed in their assessment of the extent to which the area had a suburban character. In my view, this quality can certainly be attributed to the streets surrounding this part of Carshalton Road which are mainly residential and low rise. However, Carshalton Road itself is a busy through route. It carries the A232 which is a 'red route' and links Sutton in the west with Carshalton and Croydon to the east. While there are 2-storey dwellings opposite and adjacent to the site, there are some 3-storey blocks of flats at

Wynash Gardens to the east, set back from the road but in an elevated position. To the west on Carshalton Road there are a petrol filling station and a number of retail and community uses as well as small blocks of flats and houses. Further west beyond a bridge over the railway are more substantial blocks of flats, some of 4 storeys. In this context, I consider that the Carshalton Road corridor, including the appeal site, has a more urban character. The density of the residential element of the proposals would be somewhat above the range in LP Table 3A.2 for an urban site of PTAL 3 but LP Policy 4B.1 also seeks to maximise the potential of sites. In my opinion the density ranges do not impose a ceiling on development if, amongst other things, it is acceptable in terms of its design and relationship with its local context.

9. In the context of the variety of buildings of differing size, age and style in the locality, in my view the contemporary design of the proposed building would not be out of place. However, it would be taller than its immediate neighbours and have a greater scale and mass than any other in this part of the Carshalton Road corridor. No 227 Carshalton Road is an end terrace 2-storey dwelling that abuts the appeal site. Due to the setback of No 227 the flank wall of the proposed building would be seen alongside the dwelling as well as above it in the street scene. This part of the building would be 3-storeys with a flat roof and set against the pitched roof of the terrace I am satisfied that this would be an acceptable relationship. I am in no doubt that the proposed building would be a prominent structure in views along both Carshalton Road and the end of Shorts Road. Nonetheless, taking account of the detailed design of the building, including the access and first floor overhang, as well as its size and scale I consider that it would not have a discordant or over dominant visual impact.
10. The boundary of the Carshalton Village Conservation Area is on the opposite side of Shorts Road to the appeal site. This part of the Conservation Area comprises the grounds and buildings of the Carshalton House Estate which are mainly now in educational use. After consultation, in 2007 the Council adopted a Character Appraisal of the Conservation Area to which I attach considerable weight. This has identified no significant views into or out of the Conservation Area that would be affected by the proposed development. Indeed it notes that the Carshalton House Estate is not visually prominent from outside, in part due to views being restricted by a substantial brick boundary wall.
11. Carshalton Road rises steadily to the west of the appeal site and there are views back along it towards the Conservation Area in which a band of mature trees within the grounds of the Estate can be seen above the boundary wall. These views are already partly affected by existing buildings on the site. The proposed building would be taller and deeper and when approaching the site from the west would obscure some trees for a longer period than at present. However, I estimate that the tops of trees would still be seen above the building from higher ground on Carshalton Road and would be evident in the street scene in front of the building as at present. I consider that the proposals would not harm views into or out of the Conservation Area or its setting.
12. There are a number of listed buildings within the Carshalton House Estate. The boundary wall is of late 17<sup>th</sup> or 18<sup>th</sup> century origin and is Grade II listed. From opposite the junction with Shorts Road there is a view over the wall of the

tower of the chapel at St Philomena's School, which is also listed Grade II, and the cupola on a school building which is not protected in its own right but is attached to a listed structure. The proposed building would include a rendered box feature which would overhang part of the footpath and provide a focal point at this corner. However, I find nothing in the design and scale of the building that would detract from the distant view of the tower and cupola or their settings. In terms of the listed wall, taking account of its overall length as well as height this is a substantial structure providing containment to the southern part of Shorts Road as well as strongly defining the limits of the Estate. I consider that it would not be dominated by the height and mass of the proposed building and therefore its setting would not be harmed.

13. Overall, I consider that the proposed development would not be inappropriate in its context and would add to the overall character and quality of the area. As such, I conclude that the proposed development would not have a significant adverse effect on the character and appearance of the area. It would not harm the settings of the adjacent Conservation Area or nearby listed buildings. The proposals would not conflict, therefore, with the aims of LP Policies 3A.3, 4B.1 and 4B.7, and Sutton Unitary Development Plan (UDP) Policies BE1, BE26, G/HSG/1, HSG1, HSG2 and HSG4.

#### Living Conditions of Existing Residents

14. On the Carshalton Road elevation of the proposed building there would be 17 windows on each of the first and second floors and a further 9 on the third floor. There would be one balcony at the Shorts Road corner on each of the first and second floors and terraces for third floor flats.
15. On the opposite side of the road is a row of 2-storey semi-detached dwellings at Nos 334-352 Carshalton Road. They are positioned close to the back edge of the footway and, without the presence of net curtains, blinds or obscure glazing, passing pedestrians would currently be able to look readily and directly through windows into ground floor rooms. In this context, I consider that the privacy of residents in these ground floor rooms would not be materially altered by the appeal proposals.
16. Turning to possible overlooking of first floor windows the separation distance between the front elevation of the proposed building and the dwellings opposite is some 18m. This is the same as between the dwellings and the existing buildings on the site. There are currently some 28 windows at first floor level in the Carshalton Road façade of the existing buildings. It was not disputed at the Inquiry that about 16 of these serve residential uses and some directly face first floor windows in the dwellings opposite. I consider that the existing residents of Nos 334-352 already have a perception of overlooking from these windows to which some have responded with appropriate curtains to secure the level of privacy they require. While there would be many more windows in the proposed building, views from the second and third floors, including from the terraces, would be at a steeper angle. Some of the third floor windows are set back from the edge of the main elevation, which in my view would significantly curtail any overlooking. The two balconies, at about 24m, would be somewhat further from the nearest dwelling. With the existing context and having regard to the separation distance between the first floor windows and the proposed building I consider that an unacceptable loss of privacy would not arise.

17. The proposed building would be taller than the existing, although there would be some setback for most of the third floor and part of the Carshalton Road elevation would be of three storeys. I have had regard to the guidance in both By Design and the Council's adopted Supplementary Planning Document 'Creating Locally Distinctive Places' relating to the appropriate ratio between building heights and street widths. It seems to me that while the outlook for residents at Nos 334-352 would change, given the width of the road and the design of the building the appeal proposals would not appear overbearing or obtrusive.
18. I have taken account of an appeal decision (Ref. APP/P5870/A/07/2043405) relating to a proposal for the erection of two 4-storey blocks of flats at Barlow House and 5/6 Butter Hill, Carshalton. These would have replaced a substantial existing 3-storey office block and a pair of 2-storey semi-detached dwellings. In dismissing the appeal the Inspector concluded that the proliferation of windows to habitable rooms on all four levels of the proposed blocks would result in significant intrusion into the privacy of residents opposite. He also concluded that the smaller block of flats, which would have replaced existing 2-storey dwellings, would have an unwarranted intrusion into their outlook.
19. I made an unaccompanied visit to the Butter Hill site. Notwithstanding the office block, the area has a quieter, more residential character compared with the busy traffic dominated Carshalton Road. The separation distance in that case between the existing dwellings and the proposed buildings is similar to that proposed here. However, the only existing first floor windows on the Butter Hill site in residential use were in the two semi-detached houses. It is likely that the office block would not have been occupied in the evenings and weekends, limiting overlooking to working hours. In my view, there is a much more significant presence of existing residential uses at first floor level on the appeal site than at Butter Hill. In terms of outlook, the 4-storey block that would have replaced the pair of semi-detached houses would have been significantly wider as well as taller than the existing building, whereas the Carshalton Road development would be a little narrower. I consider that together these factors amount to material differences between the two cases and, in any event, I have considered the appeal scheme on its own merits.
20. In terms of the residential properties on other boundaries of the site the distance between proposed windows, balconies and terraces to private garden areas or windows is such that I consider that, with appropriate conditions in some cases, no significant overlooking would occur.
21. My overall conclusion is that the proposed development would not cause material harm to the living conditions of nearby residents in terms of outlook and overlooking. In this respect therefore it would not conflict with the purposes of UDP Policies BE4, BE18 and HSG1 which seek to safeguard the amenities of residents, including levels of privacy.

#### Living Conditions of Future Occupants

22. The Council is concerned that the proximity of a number of windows, balconies and roof terraces to one another on the rear and return elevations of the proposed building would give rise to unacceptable overlooking. In my view,

while the windows are to living rooms and bedrooms, the relationship of these elements is not unusual in a building of this kind and balconies are often visible from the street as well as other flats. The appellants' amended plans have changed the angle of some of the windows and introduced privacy screens to some of the balconies. While the separation distances between some of the windows are small any overlooking between them would be at an angle. In this context, I consider that the relationships between these elements of the proposed flats would not result in an unsatisfactory level of privacy.

23. In a few instances the view from windows of some of the flats would mainly be towards balcony privacy screens and a blank wall. However, with the amended plans this would only apply to the windows of a second bedroom in those flats. Most windows and balconies on the rear elevations would look out towards the parking area, the landscaped amenity space and the rear gardens of residential properties beyond. I consider that this would not amount to an unacceptable outlook overall. Hence I conclude that the proposed development would provide acceptable living conditions for future occupants in terms of outlook and overlooking. It would therefore accord with the aims of UDP Policies BE1, and BE18 in this regard.

### **Other Matters**

24. The Council withdrew reason for refusal 5 relating to loss of employment land. In the light of the appellants' amended drawings it also withdrew its reason for refusal 4 concerning crime prevention and, subject to a condition requiring details of door entry systems, I consider that the appeal proposals are satisfactory in this regard. The Council considered that any outstanding matters relating to reason for refusal 6 on car and cycle parking could be dealt with by condition. There has been no objection to the level of parking provision from the highway authority and I have seen no evidence that would lead me to the conclusion that it would result in unacceptable on-street parking. I am satisfied that the appellants' unilateral undertaking addresses the various matters which had been of concern to the Council in its reason for refusal 7 and I attach substantial weight to it.
25. There are existing vehicle accesses to the site from both Carshalton Road and Shorts Road. Shorts Road is currently one-way from north to south. The appeal proposals would include a single point of access from the site onto Shorts Road and would widen a section of the road to allow improvements to the junction with Carshalton Road. In my view, there would be highway safety benefits from these measures. In addition, I consider that the appellants' transport assessment has demonstrated that there would not be an unacceptable increase in vehicles on Shorts Road to the detriment of highway safety, the free flow of traffic or the amenities of residents. In the context of the appellants' daylight and sunlight report I conclude that the proposed building would not result in a significant loss of light to neighbouring properties. The proposed amenity area on the site would be mostly separated from the residential blocks by the car park but I see no reason why this should not be a usable and valuable space for future occupants. In any event, neither this nor any of the other matters raised are of such significance that they would outweigh the considerations that have led to my conclusions on the main issues.

## Conditions

26. I have considered the Council's suggested conditions in the light of the advice in Circular 11/95 and comments made at the Inquiry. Conditions relating to landscaping and external materials are in the interests of the character and appearance of the area. The living conditions of nearby residents justify a condition restricting hours of working during the construction phase. A requirement for a construction method statement is necessary in the interests of either nearby residents or highway safety. However, I am not persuaded that the method statement should include matters relating to noise, which is in part addressed by the hours of working condition, while nuisance is dealt with under other legislation. The inclusion of the routing of construction traffic in the method statement is not appropriate as a planning condition cannot control the right of passage over a public highway. A condition requiring the provision and retention of car parking is in the interests of highway safety.
27. The appellants' Sustainability Statement indicates the intention for 10% of the proposed development's energy use when occupied to come from renewable sources. This accords with the thrust of national policy on climate change and it is appropriate to secure this with a condition. Given the previous use of a significant part of the site I consider that precautionary conditions relating to contaminated land are reasonable and necessary. Conditions requiring some windows to be obscure glazed and restricting the use of flat roof areas are necessary to prevent unacceptable overlooking of neighbours. Cycle storage provision and the requirement for a Travel Plan are justified in the interests of promoting alternatives to the car. I have in some cases varied the Council's suggested wording of conditions in the light of the advice in the Circular.
28. In the absence of any persuasive evidence that a sustainable drainage system and rain/grey water recycling are likely to be feasible and that their likely impacts on the proposed development would be acceptable I consider that it is unreasonable to impose a condition requiring an investigation into these matters. In the light of the details on the application plans the Council accepted that a condition requiring details of refuse storage and recycling was unnecessary. My decision indicates that, subject to conditions, development should take place in accordance with the terms of the application and the approved plans. I therefore consider that a condition requiring conformity with the plans is unnecessary. The case for an archaeological condition has not been made in terms of evidence that there is likely to be archaeological interest in the site or that there is a development plan policy that would support an archaeological investigation or watching brief here.

## Conclusions

29. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

*M J Moore*

INSPECTOR

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## Annex

### List of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include new planting, boundary treatments and security lighting to pedestrian and parking areas.
- 3) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 4) Demolition works, building operations in connection with the construction of external walls, roofs and foundations, site excavation or other external site works, works involving the use of plant or machinery, the erection of scaffolding, the delivery of materials, the removal of materials and spoil from the site and the playing of amplified music or speech during the demolition or construction period shall not take place outside 08.00 hours to 18.00 hours Mondays to Fridays and 08.00 hours to 13.00 hours on Saturdays and at no time on Sundays or Bank Holidays.
- 5) No dwelling shall be occupied until spaces have been laid out within the site in accordance with drawing Ref. P01E for 40 cars to be parked. The spaces to be provided shall be kept available for the parking of a car at all times and shall be used only for purposes ancillary to the residential use of the building.
- 6) No development shall take place until details of the entry systems for the external doors to the building have been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 7) No development shall take place until details of the materials to be used in the construction of the external surfaces and treatments of the building hereby permitted, including the balconies, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until a scheme for generating 10% of the predicted energy requirement of the development from decentralised renewable sources has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the development is first occupied and shall remain operational for the lifetime of the development.

- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) the parking of vehicles of site personnel, operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) storage of plant and materials used in demolition works or in constructing the development
  - iv) a programme of works
  - v) the erection and maintenance of security hoarding
  - vi) measures to prevent deposition of mud on the highway
  - vii) measures to control the emission of dust and dirt during construction
- 10) No development shall take place until a contaminated land assessment and, if appropriate, an associated remedial strategy have been submitted to and approved in writing by the local planning authority. Any remedial measures shall be carried out in accordance with a timetable and quality assurance scheme previously approved in writing by the local planning authority.
- 11) If during implementation of the development contamination is found which has not been previously identified, a specific contaminated land assessment and associated remedial strategy shall be submitted to and approved in writing by the local planning authority before the remedial works are carried out. The remedial strategy shall be carried out in full prior to completion of the development.
- 12) The windows at first floor level and above on the western side elevation of the building hereby permitted, adjacent to No 227 Carshalton Road, shall be obscure glazed and retained thereafter in that form.
- 13) Notwithstanding the details shown on drawing Ref. P07D no part of the areas shown as roof on drawing Ref. P03C shall be used as terraces or communal space.
- 14) Notwithstanding the details shown on drawings Ref P01E and P04A no development shall take place until details of the provision for cycle storage have been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved details. The storage to be provided shall thereafter be used for the storage of cycles and for no other purpose.
- 15) The development shall not be occupied until a Travel Plan according with the provisions of Appendix D of the Denis Wilson Partnership Transport Assessment dated July 2007 Ref IRF/2007-026 has been submitted to and approved in writing by the local planning authority. The measures included in the approved Travel Plan shall be implemented in accordance with a programme previously approved in writing by the local planning authority.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Andrew Tabachnik of Counsel	Instructed by Stephen Lawrence-Orumwense, Head of Legal Services, London Borough of Sutton
He called	
Eimear Murphy BSc(Hons)EP Dip(UrbDes) MRTPI IHBC	Consultant Planner/Urban Designer, Murphy Associates
Marcus Edwards BA(Hons) MRTPI	Deputy Area Team Leader, London Borough of Sutton

### FOR THE APPELLANTS:

Nicholas Clay of Counsel	Instructed by John Escott, Robinson Escott Planning
He called	
Ian Fenn BA(Hons) BArch RIBA	Partner, John Thompson and Partners LLP
John Escott BA(Hons) DipTP MRTPI	Partner, Robinson Escott Planning

### INTERESTED PERSONS:

Mark Schulz	Resident, 344 Carshalton Road, Carshalton, SM5 3PY
Simon Coxon	Resident, 3 Shorts Road, Carshalton, Surrey, SM5 2PB
P Remedios	Resident, 12 Shorts Road, Carshalton, SM5 2PB

### DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Council's second letter of notification and circulation list
- 2 Carshalton Village Conservation Area Character Appraisal
- 3 Correspondence between Council and appellants February-April 2008
- 4 Drawings and photographs relating to application Ref. D06/57046/FUL – Butter Hill
- 5 Decision notice and plans for application Ref. C2007/58644/FUL – Land at 1 Shorts Road
- 6 Letter from Terri Day, 342 Carshalton Road
- 7 SPD14 – Creating Locally Distinctive Places
- 8 Statement of Common Ground
- 9 Letter from Council concerning listed buildings at St Philomena's High School, 8 February 2005
- 10 Statement by P Remedios
- 11 Appellants' unilateral undertaking

PLANS

- A1-A9 Application plans
- B1-B10 Revised application plans
- C Illustrative drawing showing cycle store plan and elevations