



Appeal Decision

Inquiry Held on 10-12 January 2023

Site visits made on 9 and 12 January 2023

by Christina Downes BSc DipTP MRTPI

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

Decision date: 22 February 2023

Appeal Ref: APP/Q4625/W/22/3306643

281 Stratford Road, Shirley, Solihull B90 3AR

- 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 MACC Group against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2021/00086/PPFL, dated 8 January 2021, was refused by notice dated 11 April 2022.
 - The development proposed is *a residential based mixed-use development comprising 111 C3 residential apartments, 84 bed C2 Care Home, ancillary commercial uses including gym, salon and restaurant with public access and basement car park providing 130 spaces as well as landscaped courtyard, frontage visitor car park and site landscaping. New Vehicle Access from Solihull Road.*
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DECISION

1. For the reasons given below, the appeal is dismissed.

APPLICATION FOR COSTS

2. At the Inquiry an application for costs was made by the MACC Group against Solihull Metropolitan Borough Council. This application is the subject of a separate decision.

PROCEDURAL ISSUES

3. During the course of the application the proposal was revised, and the height was reduced from a maximum of 8 to 6 storeys. The amended description, which is agreed with the Council, is:

residential based mixed-use development comprising 88 C3 residential apartments, 84 bed C2 care home, ancillary commercial uses including gym, salon and restaurant with public access and basement car park providing 126 spaces as well as landscaped courtyards, frontage visitor car park and site landscaping. New vehicle access from Solihull Road.

4. Although the reason for refusal refers to 125 car parking spaces, it was confirmed at the inquiry that the correct number is 126.
5. I agreed to allow the main parties extra time to complete the Planning Obligation by Agreement (the Section 106 Agreement) following the close of the inquiry. In addition, I required additional information from the Council regarding compliance with Regulation 122 of the *Community Infrastructure*

Levy Regulations. Finally, I asked for the parties to consider whether there would be any effect on the significance of St James the Great Church by reason of the appeal site being within the setting of that Grade II listed building. All of these documents were subsequently submitted in accordance with the timetable I set at the inquiry, and I have had regard to them in my decision.

REASONS

Main Issue: Effect of the proposal on the character and appearance of the area, including the distinctiveness and streetscape of Stratford Road, Solihull Road and Sutherland Avenue

6. The appeal site is currently occupied by a building that was used as a Morrison's supermarket but closed several years ago. It lies at the southern end of Shirley town centre, close to a signal-controlled junction where Solihull Road joins Stratford Road, a main route into Birmingham. The western boundary adjoins a small service road adjacent to Stratford Road, which at this point is a dual carriageway. The northern boundary joins Solihull Road and the eastern boundary joins Sutherland Avenue, a narrow residential cul-de-sac.
7. The existing building is predominantly two-storeys in height with red brick elevations and a zinc clad roof. Within the context of its surroundings, I would not describe it as an eyesore, but it presents a long blank façade to Stratford Road and makes little, if any, visual contribution to the surroundings at this point. There is no objection to a redevelopment of the site or to some increase in height. There is also no concern about the proposed residential uses. The new development would have a smaller footprint than the existing building, which would allow space for landscaping and the provision of amenity space. However, it would be significantly higher, rising to 6 storeys along the Stratford Road frontage and at the southern end of Solihull Road. This is the main area of dispute.
8. Shirley has a long, linear town centre with a mix of traditional 1930's shopping parades and more recent standalone developments. The former are two and three storeys in height, some with flat roofs and others with pitched roofs and dormer windows. Each is distinguished by its own features, and a number have attractive decorative detailing. They are typical of many suburban shopping parades within the West Midlands area. The recent developments are more disparate in appearance, some being of better quality than others. Whilst many have larger footprints, most reflect the height of the older parades.
9. Stratford Road runs through the middle of the town centre. The retail and other commercial uses are generally located on either side, often behind narrow service roads. Overall, there is a strong and relatively consistent building line although there is some building at depth. The Parkgate Shopping Centre is the most obvious example. This is towards the northern end to the town centre and its frontage buildings rise to 4 storeys. An open pedestrian precinct flanked by commercial uses leads to an Asda superstore to the rear. At the southern end of the town centre, opposite the appeal site, there is a less coherent frontage. Here, commercial and community buildings stand behind and within open spaces and parking areas.
10. The town centre therefore has a variety of built form and I would not disagree that overall the townscape is unexceptional. However, that does not mean that it is devoid of character or lacks any positive qualities. To my mind its main

strength lies in the relatable domestic scale of the buildings, which reflect the wider residential hinterland, and the strong and coherent retail and commercial frontages. The width of Stratford Road and its associated service roads provide a sense of spaciousness that is also a defining feature. Overall, this is a typical low-rise town centre within a suburban setting.

11. It is appreciated that there was a considerable amount of discussion between the Council and the Appellant both before the planning application was submitted and before the decision was made. Public consultation was also undertaken. As a result, the appeal scheme was revised on several occasions and the height reduced from an initial 12/13 storeys to the 6 storeys in the final iteration. Various other changes were also made to the design. This engagement is to be commended and it is noted that the Council's planning and urban design officers were supportive of the scheme and recommended it to the Planning Committee for approval.
12. Whilst some aspects of the development would be acceptable, my main concern is with the higher parts of the development and the considerable step up at the western end of Solihull Road and along the Stratford Road frontage. It is appreciated that the top floor would be set back but nonetheless the proposed development would be significantly higher than that prevailing elsewhere in the town centre and its vicinity. Furthermore, the full height would extend along the whole frontage of Stratford Road resulting in a mass and scale that would dominate its frontage. It seems that this has been driven by two factors. The first is that there is a development rising to 13 storeys at Solihull Village to the north of the town centre. The second is that it was believed that the site justified a stand-out landmark building.
13. The reliance on the Solihull Village development is to my mind misplaced. This is a landmark due to its prominence and visibility. It is widely seen in views from within the town centre and could be said to mark its northern end, albeit that it stands outside the boundary. However, this development is located at a large roundabout junction. The highest element only occupies part of the frontage, and the building then steps down on either side. Furthermore, it occupies the former Powergen site which included a 9 storey 1960's office block that had been vacant for many years. The development of the site is referred to in policy P2 of the Local Plan. There is no disputing that this is a very large and prominent development, but its circumstances and context are, in my opinion, not comparable with the appeal site or its location.
14. A landmark is designed to stand out and be different from its surroundings. At the southern end of the town centre St James the Great Church performs this function. In this case the building does not stand out because of its height but rather on account of its age and historic value. Along with its open churchyard it conveys a clear sense of arrival to the town centre from this direction. In addition, landmarks can have a wayfinding role, but in the case of Shirley town centre its linear form makes it easy to navigate.
15. The Appellant considers that a corner site, where two main roads join, is an appropriate site for a landmark building. Corner sites are referred to in such terms in *New Housing in Context Supplementary Planning Guidance (2003)*. However, this is mainly concerned with residential situations, and in any event, suitability will depend on the particular circumstance. In this case I rather agree with the Council that the corner site is actually the area of land occupied

- by the former HSBC bank. Although it was probably designed and built as a single development with the supermarket it is not part of the proposed development and would stand outwith the site boundary.
16. There is nothing in local policy or guidance to suggest that this junction or even this part of the town centre requires a further landmark development. The Council does not object to a building of greater height to mark the southern end of the commercial uses on the eastern side of the town centre. However, its acceptance that a landmark building could be acceptable here is a different proposition to the suggestion that such a building is needed here.
 17. The fact that the former HSBC building has had to be retained has in my opinion contributed to the unsatisfactory nature of this part of the appeal development. The Design and Access Statement says little about the design approach in respect of this building or its visual integration. As a consequence, it seems to me that the relationship between the retained elements and the new building is unsatisfactory and somewhat incongruous. The new development would step around its smaller neighbour at full height. Although the sixth storey would be set back, there would be a consistent five storey development along the Stratford Road frontage and regardless of the step around the former HSBC building, the overall scale would appear uncompromising, discordant and unduly dominant in the street scene. Furthermore, there would be no step down at the southern end in recognition of the three storey height of the part of the neighbouring building that adjoins the site. This relationship would therefore appear awkward and unsatisfactory.
 18. It is appreciated that the design has sought to incorporate some more traditional elements such as string courses, an ordered arrangement of window bays and brickwork elevations. There would also be some visual interest from features such as the colonnade and the projecting bay at the southern end. Nevertheless, these aspects do not overcome my concern relating to the height and massing and the insufficient respect for, or consideration of, the existing urban environment.
 19. The *National Planning Policy Framework* (the Framework) places great importance on good design and the *National Design Guide* provides the Government's approach to beautiful, enduring and successful places. It sets out the characteristics of well-designed places and includes context and identity where development integrates and relates well to its surroundings and relates to them in a positive way. This does not mean to say that the design of the development has to copy its surroundings, but it does need to have regard to them because local character is what makes places distinctive. For the reasons I have given here I do not consider that the appeal development satisfactorily achieves this objective.
 20. There are several street trees along this section of Stratford Road and the computer-generated images show the building to be well screened. However, these trees are deciduous and as I observed at my site visit, during the winter months the site frontage is highly visible. I also judged that the scale of the building would be particularly apparent when looking from the town centre in a southerly direction as it would be seen within the context of the two and three storeys of the existing built environment. The area of largely blank brickwork, where the building steps forward around the former bank building, would draw the eye and be a prominent and unattractive feature in the street scene.

21. I have considered the Appellant's point about enclosure and the comment in *Manual for Streets* about how height to width ratios can be improved. However, this is primarily intended to guide the design of new residential streets or the redesign of existing ones. Its applicability to the present situation seems to me to be limited. In any event, the proposed increase in building height at the appeal site would have little beneficial effect in this regard because the main issue relates to the loose knit development and large open forecourts on the western side of the road. I agree that this area impacts negatively on the town centre as, to a lesser extent, does the Iceland building on the opposite corner of Solihull Road. However, neither of these situations would be improved by the appeal scheme, which to my mind would merely emphasise the difference in scale between the proposal and its surrounding context.
22. Whilst local and national planning policy seeks to encourage the effective use of brownfield sites in accessible locations such as this, it also requires respect for the context and the receiving environment. In this case the evidence suggests that there was little analysis of the local area or its character prior to the submission of the appeal. Rather, the project seemed to be driven by a need to maximise the development potential of the site. Little thought appears to have been given to considering what factors contribute to the character of this particular locality and how the development could reflect it. Whilst the scheme has evolved over time, this aspiration for a stand-out and striking building seems to have been the main driver for the development approach. This may be appropriate in some situations, but I do not consider that what has been proposed would be acceptable here.
23. For all of the above reasons, I conclude that the appeal proposal would fail to integrate successfully with its host environment or sympathetically respond to its town centre location. Whether or not a landmark building would be acceptable here, this particular proposal would be unduly harmful to the character and appearance of the area and the streetscape of Stratford Road and the southern end of Solihull Road. This would be contrary to policy P15 in the *Solihull Local Plan* (the Local Plan), which seeks to secure good quality design. In particular, it includes a requirement to conserve and enhance local character, distinctiveness and streetscape quality and ensure that the surrounding built environment is respected in terms of scale and massing, amongst other things. The Framework also promotes good design, which is seen as a key aspect of sustainable development.

Other matters

Effect on St James the Great Church

24. St James the Great Church is a Grade II listed building at the southern end of the town centre. The significance of the church is mainly derived from its architectural and historical interest. The immediate setting is provided by its churchyard and there are associations with the village it was built to serve as a chapel of ease. The wider setting does include the appeal site but it is now an urban environment rather than the agricultural land and scattered habitation that surrounded the church when it was built originally in the early 19th century. I agree with the conclusion of both main parties that the proposed development would not be a visually intrusive element and would have no effect on the significance of the heritage asset.

25. There is also a Grade II listed War Memorial on the eastern side of the churchyard. Its significance is derived from its physical presence and its historical interest as a commemoration of those in the congregation who died in the two World Wars. It is designed to be seen from Stratford Road and from within the churchyard but has no functional or historical association with the appeal site. Its setting seems to me to be relatively confined to the area around it from where it was intended to be viewed. The appeal site is not within this immediate locality and the proposed development would not have any effect on the significance of the heritage asset.

Effect on living conditions

26. There was considerable concern from those living nearby that the appeal proposal would result in unacceptable harm to their living conditions. It seems to me that the properties most affected would be the houses facing the site on the eastern side of Sutherland Avenue. The Appellant undertook a building shadow study. This indicates that at most times of the year there would be relatively small changes in terms of overshadowing. However, in winter when the sun is lower in the sky it appears that there would be a greater loss of sunlight to these houses. This is a matter for consideration in any future proposal for the site.
27. There would be windows to the elderly care accommodation facing east on all three levels of the part of the building nearest the boundary. This would clearly result in a considerable change to the existing outlook from the front of the existing houses. However, change does not equate to harm and there would be a distance of some 23-26m between the new and existing building facades. In addition, it is proposed to have landscape screening in front of the new building. In the circumstances I am satisfied that the proposal would not appear overbearing or result in unacceptable overlooking to these residents.
28. The proposal would result in the removal of the existing roof level car park and the service yard and car park entrance at the northern end of Sutherland Avenue. Whilst a small, landscaped parking area is proposed in front of the new building with a similar access point, it seems to me that there would be a considerable improvement to the residential environment both visually and in terms of noise at this point.

Effect on highway safety

29. There was local concern about traffic generation, especially from the undercroft parking due to its proximity to the signal-controlled junction. The proposal includes provisions to move the bus stop at this point and would only allow left turning movements out of the access. The Transport Assessment indicates that the peak hours traffic generation would be considerably less than that of the former supermarket. Furthermore, the junction impact assessment indicated that the capacity would be more than sufficient to accommodate the relatively modest flows generated by the appeal scheme. There would be "keep clear" road markings to allow right turn access into the site across queuing traffic and the Transport Assessment indicates that the number of such movements would in any event be relatively small.
30. The Council acting as Highway Authority raises no objection to the appeal development. As the statutory authority responsible for the safe operation of the local highway network this is a consideration of importance and weight. In

the circumstances I am satisfied that the proposal would not have an adverse effect on highway safety.

Benefits of the appeal proposal

Housing need

31. There is no dispute that the Council has a housing land supply of between 3.02 and 3.6 years. It cannot therefore deliver sufficient homes to meet its housing need in accordance with paragraph 74 of the Framework. It is also agreed that in Shirley there is a need for one and two bedroom flats to address an imbalance between housing supply and demand. The review of the Local Plan is at examination stage and only limited weight can be given to its provisions at the present time. It currently relies on Green Belt releases in order to meet its housing requirement but, in any event, plan-led housing delivery is unlikely for a while. At the moment, housing delivery depends on windfall sites such as the appeal site. In the circumstances, the proposed 88 residential units can be given significant weight in the planning balance.
32. The proposal also includes 9 affordable housing units, which takes account of the existing floorspace on the site under the vacant buildings credit. The Appellant has indicated that it is doubtful that a Registered Provider would be prepared to manage this number of units within the proposed configuration. In the circumstances, the S106 Agreement also allows the alternative of a financial contribution to provide the affordable units elsewhere. If they are to be provided on-site, there would be 6 social rented units and 3 shared ownership units, and their provision would be related to the occupation of the market units. There is a pressing need for more affordable housing within the Borough. Whilst only a small number of units would ensue, their provision on or off the site would be a matter of significant weight in the planning balance.
33. The Appellant indicates that the provision of the care home would free up housing, including family homes to help meet housing need. Whilst this may happen it is an unquantified benefit and new occupiers may well come from outside the Borough or from other care facilities. I appreciate that this was referred to in two recent appeal decisions¹, but in the absence of any assessment this is a benefit to which I ascribe limited weight.

Need for care bedspaces

34. There is no dispute that there is an identified need for older persons' housing within the Borough and that this will increase significantly by 2036. It is also agreed that there are currently 1,757 registered care bedspaces provided by 32 Care Quality Commission registered care homes in the Borough. The population in the Borough has a greater proportion of elderly people compared to the West Midlands and England overall. Furthermore, the proportion of the population that have dementia and mobility issues is forecast to rise.
35. It is difficult to compare the positions of the main parties as the Council's assessment is based on the supply of registered care beds whilst the Appellant's does not consider that all registered bed spaces meet current market expectations. For example, they may include bedspaces in shared rooms and bedrooms without en-suite facilities. Furthermore, the Council's

¹ APP/Q4625/W/19/3237026 and APP/Q4625/W/21/3285876.

assessment of the current position is based at 2022 whereas the Appellant's is based at 2025, which it considers would be the earliest that the proposed care beds would be available. The Council assessed a net need for 156 registered beds in 2022 whilst the Appellant assessed a net need for 199 en-suite beds in 2025. Looking forward to 2036 the equivalent position is 763 and 619 bed spaces respectively. This though assumes that no new provision would be made, and this seems unlikely as it is reasonable to surmise that windfall developments will continue to come forward for this type of use.

36. The Local Plan does not include any policy provision for the accommodation of elderly people. Draft policy P4E in the emerging review of the Local Plan does address the matter to some degree but it does not propose any specific allocations for uses of this nature. There are currently no outstanding planning permissions for care homes, but there are two pending applications that would provide 84 care bedspaces. However, there is no plan-led strategy to address the need for elderly persons' accommodation and no certainty about when, if at all, such a strategy will be in place. I acknowledge that local objectors consider that there are already too many care homes within Shirley. However, the need is not area-specific but applies to the whole Borough. Although there is a current need to free up hospital resources, the position when the proposed care home would be operational is unknown. Nevertheless, the proposed 84 bedspaces in high quality units, including provision for dementia care, is a matter of significant weight in the planning balance.

Other public benefits

37. The proposed development would make use of previously developed land, and this is in accordance with national and local planning policy. However, the degree to which it would reduce the need for use of Green Belt sites, which are subject to stringent control, is unquantifiable. Any benefit in this regard is more likely to derive from the care home part of the scheme on account of the extent of the need and the lack of policy provision to address it. This is a benefit to which I attribute moderate weight.
38. The proposal would provide active frontages where none currently exist, especially along Stratford Road and Solihull Road. There would be new jobs both during the construction and operative phases. It is estimated that there would be 80 full-time and 12 part-time jobs within the care home. The new residents, particularly those who would occupy the apartments, would be likely to support local shops and services through an increase in local spending. These are benefits to which I attribute moderate weight.
39. This is a highly accessible location in the town centre. Many journeys by residents, care home staff and visitors could be undertaken on foot, by cycle or by public transport rather than by private car. However, the proposal includes 126 car parking spaces within the undercroft car park and a further 9 outside the entrance to the care home. It is not clear how the spaces would be allocated but it is a reasonable assumption that they would be intended for users of the development. To my mind the parking provision would not encourage residents, staff or visitors to travel by sustainable modes and the accessibility of the site is therefore a benefit of only limited weight in this case.
40. The proposal would include a gym, restaurant and salon and, as I understand it, these facilities would be available for wider public use as well as the use of residents of the care home and apartments. Whilst this would convey a wider

benefit, there was no suggestion that these facilities are not already available in the wider town centre. There would be a net gain to biodiversity, although this would be relatively modest. These benefits are given limited weight.

41. My attention has been drawn to three appeals² relating to the provision of care accommodation within the Borough. Two of these were in the Green Belt and one was allowed and one dismissed. The third related to heritage assets and was dismissed. Whilst I appreciate the need for consistency in decision making, the weight to afford a material consideration, whether it be a benefit or harm, is a matter for the judgement of the decision maker taking account of the evidence in that particular case. I have explained my reasoning having regards to the merits in this appeal, and the circumstances pertaining. I have not detected any inconsistencies in terms of my approach but if my judgements are different from those of my colleagues, it should be clear why.

Overall conclusions and planning balance

42. The failure of the Council to demonstrate a five year supply of deliverable sites to meet its housing needs means that the presumption in favour of sustainable development under paragraph 11d)ii) of the Framework is engaged.
43. The proposal would have a number of advantages and the overall package of benefits is a matter of very significant weight in favour of the appeal proposal for the reasons I have given. However, the Framework does not advocate the effective use of land for homes at the expense of safeguarding and improving the environment. In this case, the adverse impacts of the proposed development would result from the unacceptable harm to the character and appearance of the area and the street scene in Stratford Road and at its junction with Solihull Road. The conflict with policy P15 is a matter of substantial weight. In my judgement, the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
44. In reaching this conclusion I have considered the planning conditions that could be imposed and the planning obligations that have been put forward in the Section 106 Agreement. However, none of these provisions could satisfactorily overcome the adverse impact or make the development acceptable.
45. The appeal proposal would be contrary to policy P15 in the Local Plan. Although there are parts of the policy that are not offended, the wording does not allow the provisions to be considered in the alternative. Each one has to be met in order to achieve policy compliance. Policy P15 is consistent with and reflects the Framework in terms of achieving good design and respecting local character. This policy conflict is not incompatible with the fact that the appeal proposal would not offend other local and national policies. I consider that policy P15 is the most important policy for determining this particular planning application and that the appeal proposal would therefore conflict with the development plan when taken as a whole.
46. Having undertaken the tilted balance, which considers the harms and benefits in accordance with paragraph 11 of the Framework, I conclude that there are no material considerations to indicate that a decision should be made otherwise than in accordance with the development plan. I have taken account of all

² As Footnote 1 and APP/Q4625/W/22/3290303.

other matters raised in the oral and written evidence but have found nothing to change my conclusion that the appeal should not succeed.

Christina Downes

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ian Ponter	Counsel instructed by Solihull MBC Legal Services
<i>He called:</i>	
Mr S Kouyoumjian	Associate Director of Tyler Parkes
BA(Hons) DipArch MA	
CEPHD ARB RIBA	
Mr D Carter BSc MSc	Senior Planning Consultant of Tyler Parkes
MRTPI	

FOR THE APPELLANT:

Mr Robert Walton	King's Counsel instructed by Claremont Planning
<i>He called:</i>	
Mrs K Else BSc(Hons)	Managing Director of Claremont Planning
DipTP MRTPI	
Mr M Dixon BA(Hons)	Associate Director of UMAA Architecture
DipArch	
Mrs J Venables	Director of Carterwood
BSc(Hons) MSc(Hons)	
MRICS	

INTERESTED PERSONS:

Mrs D Richards	Local resident
Mr A Mistry	Local resident
Mr Z Afzal	Local resident
Mrs J White	Local resident

DOCUMENTS

- 1 Council's Community Infrastructure Levy Compliance Statement
 - 2 Council's letters of notification of the appeal and the inquiry and list of persons notified
 - 3 Views of the proposed internal courtyard (drawing no: 01100-03 CGI-3)
 - 4 Letter and presentation submitted at the inquiry by Mr Afzal
 - 5 Information on listing of the Church of St James the Great
 - 6 Joint statement by the Council and Appellant concerning density
 - 7 Draft planning conditions agreed by the Council and Appellant
 - 8 Costs application made by Mr Walton on behalf of the Appellant
- Documents following the close of the inquiry:**
- 9 Council's further information on Community Infrastructure Levy compliance
 - 10 Further heritage information
 - 11 Planning Obligation by Agreement, dated