

Appeal Decision

Site visit made on 5 September 2016

by J Flack BA Solicitor

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

Decision date: 22 September 2016

Appeal Ref: APP/Q5300/W/16/3151837

Former Comfort Hotel, 52 Rowantree Road, Enfield EN2 8PW

- 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 Mr Mario Savva against the decision of the Council of the London Borough of Enfield.
 - The application Ref 15/04634/FUL, dated 12 October 2015, was refused by notice dated 11 March 2016.
 - The development proposed is demolition of existing hotel and the erection of a 3 storey building with accommodation in the roofspace, comprising 16 flats, 2 x 1 bedroom, 7 x 2 bedroom and 7 x 3 bedroom units (including 2 wheelchair accessible units) with underground parking for 16 spaces, 4 spaces on front forecourt and cycle storage and refuse store facility.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The description of development given above is that provided by the application. However, it is apparent that the layout of the proposed building was amended during the course of the Council's consideration of the applications so as to provide for two 1 bedroom flats, eight 2 bedroom flats and six 3 bedroom flats. The Council assessed the proposal on that basis and so shall I.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - Whether the proposal would provide an appropriate mixture of dwellings;
 - The effect of the proposal on the living conditions of future occupiers of the proposed flats and of adjacent residents; and
 - Whether the proposal would make an appropriate contribution to affordable housing, education facilities and employment opportunities.

Reasons

Character and appearance

4. The appeal property is a former hotel situated at the corner of Rowantree Road and Chasewood Avenue. These are both cul de sacs which form part of a

network of streets leading off the Ridgeway. The locality reads as an established residential suburban area, the former hotel use of the appeal property being a singular exception. The appellant's Transport Statement indicates that the nearest shops and most other facilities are located around 1km away. Bus stops and Gordon Hill railway station are somewhat closer, but the services offered are not particularly comprehensive, especially at weekends, and the information before me does not conflict substantially with the relatively poor public transport accessibility level indicated by the site's PTAL rating of 1a. It follows, as the Council contends and the appellant accepts, that the proposal would considerably exceed the appropriate density ranges set out in table 3.2 of the London Plan.

5. Policy 3.3 of the London Plan recognises the pressing need for more homes in London, as do I, but that is subject to Policy 3.4's overall objective that development should optimise housing output for different types of location within the relevant density ranges shown in Table 3.2. However, the Policy also states that local context and character, the design principles in Chapter 7 and public transport capacity should be taken into account. Moreover, paragraph 3.28 of the supporting text states that density is only the start of planning housing development, and that it is not appropriate to apply Table 3.2 mechanistically.
6. There is no indication that considerations of public transport capacity are material to the proposal, but the other factors referred to in Policy 3.4 are of clear relevance. The appeal property consists of two principal elements, these being a substantial house appearing to date from the C19 and, to one side of this, a much more recent flat roofed block. The property is of partly three and partly four storey construction, but the fourth storey is limited to accommodation within the roof of the house and a very small section of the later block. The latter is very inconspicuous due to its considerable set back from the elevations. The modern block therefore appears in practice as a three storey structure which is set considerably lower than the C19 house.
7. The appellant draws attention to various residential properties in the locality. Reference is made to Nos 40 – 44 Rowantree Road, which the appellant describes as being partly 4 storey. However, the only 4th floor element is a dormer window to one of these modest modern townhouses, whose bulk is in any case materially reduced by the houses being set some way below street level due to sloping ground. I saw that there are a number of recent apartment blocks in Bycullah Road, some of four storey construction, but these are some distance away from the appeal property. There is a four storey block of flats much closer to the appeal property, Sorbus Court, but it has a smaller frontage than the appeal property. It is in any case a jarring exception in the vicinity of the site; although there is a considerable variety of ages and design approaches, development here is overwhelmingly characterised by two storey houses, many of modest size.
8. It follows that in my view the appeal property is an incongruity in the vicinity, and for that reason it is not to be considered as a persuasive precedent in considering any proposed replacement. In any case, the proposed building would, albeit by a modest degree, be taller than the existing property and it would, overall, represent a material and harmful increase in scale, bulk and dominance. I acknowledge that a cat slide roof has been incorporated on the west side of the proposed building and this would result in its western elevation

being lower than that of the existing modern block and more respectful of the closely adjacent semidetached house at 58 Rowantree Road. However, from that point the roof would rise up rapidly and the western half of the proposed building would, overall, have a substantively greater bulk than the present modern block. At the rear, the plans indicate that although the proposed building would have a smaller footprint than the existing property at lower levels, it would have a materially greater bulk at upper levels, and the fourth floor accommodation provided by the proposed building, albeit contained in the roof space, would be considerably greater than that of the existing property.

9. Moreover, whilst the modern block has a somewhat utilitarian appearance, its contrasting design approach and lower height in comparison to the C19 house do have the effect of visually dividing the bulk of the existing property and causing the modern block to read as a subordinate addition to the house. So too do the small modern extensions at the rear. By contrast, although the proposed building would incorporate some features of the C19 house and nearby dwellings, notably the use of gable ends and facing brickwork, it would have no substantially subordinated elements which would break up its bulk, and the considerable volume of its roof would cause it to read as a four storey building. It would thus have a monolithic and excessively dominant appearance. In addition, whilst I appreciate the design intentions of the cat slide roof, this would read as a somewhat contrived feature and give the front elevation an unbalanced and awkward appearance.
10. Much of the proposal's parking would be located within the footprint of the building at basement level. This would allow the front curtilage to be landscaped, which would materially improve on the present hard surfacing. However, neither this or any other positive aspects of the proposal are sufficient, by some margin, to outweigh the harmful features I have identified and the consequent conflict with the prevailing character of surrounding development. I thus conclude that the proposal would cause unacceptable harm to the character and appearance of the area. This would serve to confirm, rather than mitigate, the proposal's conflict with the density standards of the London Plan, and the proposal would thus conflict with policy 3.4 of the London Plan and with policy DMD 6 of the Development Management Document (the DMD) which requires, amongst other things, that proposed development must be of a density appropriate to the locality, complies with the London Plan density matrix, has a scale and form appropriate to the existing pattern of development, and achieves a high standard of design. There would also be conflict with Core Policies (CP) 4 and 30 of the Core Strategy (CS), which require high quality design, Policy DMD 37 of the Development Management Document (the DMD), which rejects development that is inappropriate to its context, and conflict with the similar objectives of Policies DMD 6 and DMD 8 of the DMD and Policy 7.4 of the London Plan.

Appropriate mixture of dwellings

11. The objectives of CP 5 of the CS included the achievement of a specified borough-wide mix of housing. The ongoing importance of this objective is confirmed by Policy DMD 3 of the recently adopted DMD, which requires that Development on sites capable of accommodating 10 or more dwellings should meet the CP5 targets.
12. Whilst clearly a scheme of flats cannot provide the houses anticipated by the Policies, the predominance of small units within the proposed building is in

substantial conflict with the targets. The appellant refers to recent developments approved by the Council, but no details of the planning circumstances are provided. The appellant has supplied an extract from the Council's Monitoring Report and Housing Trajectory 2015, which indicates that the percentage of 3+ bedroom homes in 2014/15 was lower than that which the appeal proposal would achieve, and considerably below the target levels. However, there is no indication that this outcome was due to the Council considering the targets to be unimportant or not seeking to pursue them. The extract instead records that the failure to meet the targets was largely driven by the viability needs of the developments. This is an important planning consideration, but whilst the appellant asserts that delivery of a fully compliant scheme in terms of housing mix would have implications for viability, no detailed evidence to support this is before me, nor evidence of any other factors which would demonstrate that a development of the site which would better accord with the targets would be impractical. The appellant points to the financial contribution to affordable housing which the proposal would make. I shall consider this more fully in relation to the final main issue, but in relation to this main issue I observe that there is no evidence as to the numbers and mixture of dwellings that a financial contribution would be likely to provide. I thus cannot be confident that this would substantially mitigate the proposal's conflict with the targets.

13. I therefore conclude on the evidence before me that the proposal would not provide an appropriate mixture of dwellings and would unacceptably conflict with CP 5 and Policy DMD 3.

Living conditions

14. The Council considers that the proposed flats would fail to provide an adequate quality of accommodation for their future residents. However, it is apparent that its only concern is the areas of private amenity space which would be provided to 6 of the flats. These would not comply with the relevant standards required by Policy DMD 9 of the DMD. These are expressed as minima, and to be achieved where a communal amenity area would also be provided; such provision here therefore does not mitigate the proposal's shortfalls. However, the Council has not sought to dispute the appellant's statement at appeal that the shortfalls would be very minor. I consider therefore that the proposal would not be unacceptably harmful to the living conditions of future occupiers of the proposed flats. There would be no conflict in this respect with CP 4 of the CS, and whilst there would be conflict with Policy DMD 9, this is not a matter which on its own significantly counts against the proposal.
15. However, I have greater concerns in relation to the proposal's effect on the living conditions of adjacent occupiers at 58 Rowantree Road and No 1 Chasewood Avenue. The context is a sensitive one given the already considerable scale, bulk and dominance of the existing property compared to these neighbouring dwellings. There would be very little separation between the proposed building and the house at No 58 Rowantree Road, which has a number of windows in its side elevation facing the site and a relatively narrow plot. I saw that there are some trees along the shared boundary, but these are intermittent. The proposed cat slide roof would substantially reduce the height of the proposed building compared to the modern block at the shared boundary, but it would have an extremely large and prominent area, and the greater height and bulk of the remainder of the building at upper levels would

be readily apparent. Whilst the orientation of the No 58 and the proposed building and the cat slide roof design would mean that significant loss of daylight and sunlight would be unlikely, I consider that the proposed building would have an unacceptably dominating and enclosing effect on the outlook of occupiers of No 58.

16. To the east of the appeal site is No 1 Chasewood Avenue, a detached house. Whilst much of the shared boundary is planted with tall conifers within the curtilage of No 1, there is a substantial gap adjacent to the rear of the appeal property. Although the bulk of the proposed building, on its eastern side, would be less than that of the current property at lower levels, the considerable increase in bulk at upper levels and the monolithic appearance of the building would outweigh this, even though much of the increase in bulk would be at the level of the roofspace which would slope away from the boundary. The relationship between the proposed building and this neighbour is less sensitive than at No 58, as the house at No 1 has a generous triangular plot and is set some distance from the shared boundary. The dominating and enclosing effect of the proposed building on the outlook of No 1's windows and garden would accordingly be less than at No 58, but it would still be unacceptably material.
17. The appellant draws attention to noise and disturbance arising from the former hotel, but there is some indication that this was due to poor management practice, and was responded to by regulatory action. Residential occupation can also give rise to inconsiderate behaviour, and I am not convinced that the change of use would give rise to any very significant improvement in living conditions. There is, however, no evidence before me that the proposal would give rise to significant adverse effects on the living conditions of adjacent residents in relation to any matters other than those I have assessed above, and I note in particular that overlooking could be sufficiently obviated by conditions requiring obscure glazing. Nevertheless, the adverse effects on outlook that I have identified lead me to conclude that the proposal would, overall, have an unacceptably harmful effect on the living conditions of adjacent residents. The proposal would in this respect represent poor design and conflict with the design objectives of the various development plan policies to which the Council refers. In addition there would be particular conflict with the requirement of Policy DMD 8 that development must preserve amenity in terms of outlook.

Contribution to affordable housing, education facilities and employment opportunities

18. The Council's reasons for refusing the application included the lack of a Section 106 agreement to secure financial contributions to affordable housing, education and employment. However, a unilateral obligation is before me which makes provision for the payment of those contributions in the amounts sought by the Council. I must consider whether those contributions would comply with the tests set out at paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (the S106 tests), and also examine whether the submitted obligation would be effective.
19. Policy DMD 1 of the DMD requires that development should provide the maximum amount of affordable housing having regard to the borough-wide affordable housing target of 40% which is contained in CP 3 of the CS and applies to all sites capable of accommodating ten or more units. What is to be regarded as the maximum contribution is to be dependent on viability and a

number of other factors set out in Policy DMD1. In this case there would be no direct provision on site, but the obligation provides for a substantial financial contribution. A viability report¹ commissioned by the appellant is before me which concluded that it was not viable to make a contribution. However, the Council's officer report records that it had commissioned an independent review which concluded that the scheme could support a contribution. The amount the report refers to is that which would be provided by the obligation, and I conclude from this that the appellant has accepted the findings of the Council's review. I consider therefore that the S106 tests are met in relation to this contribution, but I observe that there is no evidence that the proposal would go beyond the minimum necessary to accord with the requirements of development plan policy in relation to affordable housing, and this limits the positive weight it is appropriate to accord to the proposal in this respect.

20. The obligation would provide a financial contribution to the cost of provision of additional education facilities in the borough. The overall objective of CP 8 of the CS is the provision of appropriate school and other learning facilities to meet projected demand across the Borough, and the Council's Section 106 Supplementary Planning Document records growing demand for school places. It is thus important that new development does not prejudice the objectives of CP 8. A significant proportion of the flats comprised in the proposal would be suitable for family occupation, and the proposal would thus generate substantive demand for school places. A financial contribution is therefore necessary to make the development acceptable, and the amount of the contribution does not seem to me disproportionate. The S106 tests would thus be met.
21. The obligation would also provide a financial contribution to towards initiatives to create employment opportunities in the borough. Such a contribution has a clear and direct policy basis in Policy DMD 22 of the DMD, and as the appeal property would have provided substantive employment opportunities in its former hotel use, the modest amount of the payment is proportionate. I conclude that the S106 tests would be met in relation to this contribution.
22. However, I have a number of significant concerns about the submitted obligation before me. It is undated, and whilst the appellant has executed it, the mortgagee has not, which has the result that the mortgagee and persons deriving title from it would not be bound. Moreover, the obligation is expressed to be conditional on the grant of planning permission, but that is defined by reference only to a planning permission granted by the Council. I also note the restrictions on pooled contributions to infrastructure at Regulation 123 of the CIL Regulations, and I do not have sufficient information to be certain that the financial contributions to education or employment would not engage these restrictions.
23. Drawing all of the above matters together, I consider that the financial contributions set out in the submitted planning obligation are necessary to make the development acceptable in planning terms and conform to the S106 tests in all other respects. However, the various significant concerns I have identified in relation to the submitted obligation are such that I conclude that the obligation would be ineffective. The proposal would therefore not make an appropriate contribution to affordable housing, education facilities and employment opportunities.

¹ Richards & Devitt Housing and Development Consultants, dated October 2015

Conclusions

24. The proposal would provide some 16 flats and thereby make a positive contribution, albeit modest, to meeting the need for new housing. However, I have concluded above that the proposal would cause unacceptable harm to the character and appearance of the area, and would not provide an appropriate mixture of dwellings. Moreover, whilst the proposal would not be unacceptably harmful to the living conditions of future occupiers of the proposed flats, I have found that the proposal would, overall, have an unacceptably harmful effect on the living conditions of adjacent residents. I have also concluded that the proposal would not make an appropriate contribution to affordable housing, education facilities and employment opportunities.
25. I acknowledge that last of these conclusions is reached on the basis of deficiencies in the submitted planning obligation which it might be possible to overcome. However, I have not pursued this with the parties, for even if the deficiencies were to be overcome, the financial contributions secured by the obligation would not result in the material harm and policy conflicts I have identified in my assessment of the other main issues being outweighed.
26. I have considered all other matters raised by the evidence before me, but nothing arises which disturbs the conclusions I have reached above. The appeal is therefore dismissed.

J Flack

INSPECTOR