

## Appeal Decision

Site visit made on 26 October 2016

**by John Dowsett MA DipURP DipUD MRTPI**

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

**Decision date: 7<sup>th</sup> November 2016**

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**Appeal Ref: APP/R5510/W/16/3150977**

**Land forming part of 92 Field Heath Road, Uxbridge, UB8 3NJ**

- 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 Rajnikant Popat against the decision of the Council of the London Borough of Hillingdon.
  - The application Ref: 12504/APP/2015/3703, dated 6 October 2015, was refused by notice dated 18 March 2016.
  - The development proposed is a three storey building to create 3 one bedroom self-contained flats and 3 studio flats with associated cycle parking.
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### Decision

1. The appeal is dismissed.

### Procedural matter

2. The original planning application was made in the names of four individuals. The appeal has been made by the person named first on the planning application form and, consequently, I am satisfied that the appeal has been made by the original applicant for planning permission.

### Main Issues

3. The main issues in this appeal are:
  - The effect of the development on highway safety, with particular regard to parking;
  - The effect of the development on the character and appearance of the area; and
  - Whether the proposed development would provide suitable living conditions for the future occupants, with particular regard to outlook and amenity space.

### Reasons

#### *Highway safety*

4. The proposed development does not include any provision for parking for the future residents. The appeal site is located within a controlled parking zone where parking permits are required. Field Heath Road, Colham Green Road and the turning head at the end of Colham Road adjacent to the appeal site are subject to parking restrictions in the form of double yellow lines. At the time of my visit the available parking spaces in the surrounding streets were well used
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as was the short term parking area to the front of the shops adjacent to the appeal site.

5. The public transport accessibility level (PTAL) is an accepted measure of accessibility in London. According to the officer's report, the site is located in an area that has moderate accessibility with a PTAL rating of level 3. Whilst the Council suggest that a PTAL rating of 3 does not lend itself to a car free development, the policies referred to in the reasons for refusal are silent in this regard and no other evidence has been submitted to indicate why this is not acceptable.
6. There are bus stops on Pield Road and Colham Green Road within a very short distance of the appeal site with frequent services, and whilst there are not a wide range of services within walking distance, in the group of commercial buildings immediately adjoining the appeal site there is a general dealers shop and the Council's Statement of Case notes that a larger retail unit to be occupied by Tesco has planning permission. Work on this was in progress when I visited the site.
7. On this basis, the future residents would not necessarily be solely dependent on the private car for their day to day requirements. I note that the Highway Authority had no objections to the development on highway grounds, subject to future residents not holding parking permits. However, the Council comment that use of a planning obligation to prevent future residents from acquiring parking permits has been found unlawful. I am mindful of the decision in Westminster City Council v SSCLG & Mrs Marilyn Acons [2013] EWHC 690 (Admin). However, whilst the obligation in that case sought to prevent the owner from applying for a parking permit and therefore did not comply with the strict terms of s106(1), nonetheless, it is possible to restrict the use of land by prohibiting occupation of the property by anyone holding a permit.
8. The appellant has submitted with the appeal a signed and dated unilateral obligation framed in these terms, which also undertakes to make any occupiers aware of the car free obligation and the need to be compliant with it. However, the obligation contains errors that would affect the ability to enforce it. In Section 1 'Definitions' the application is defined as an application for the prior approval of the Council in respect of (a) the transport and highways impacts of the proposed development; (b) contamination risks on the site; and (c) flooding risks on the site pursuant to Part J.2 of Class J of the Order. The planning application was a full planning application and not a prior approval application relating to the exercise of permitted development rights. The definitions section also incorrectly defines the proposed development as the change of use of the land to residential, when it comprises operational development. Additionally, the obligation refers to land edged red on a plan that is not attached to the obligation.
9. Whilst these are technical errors in the drafting of the obligation, nevertheless, they are fatal flaws which result in the obligation not correctly relating to the proposed development and, as a consequence, not capable of being enforced should the terms be breached. I therefore cannot give any weight to the submitted unilateral obligation.
10. The area surrounding the appeal site is subject to parking stress as evidenced by the fact that it is a controlled parking zone. If car ownership and use was not restricted, the proposed development would introduce additional cars into

this area, which would add severely to the existing parking stress and result in conditions that were prejudicial to road safety. In the absence of a mechanism to prevent the future occupiers of the development from using cars, the appeal must fail on this ground.

11. I therefore find that the proposed development would cause harm to highway safety in the vicinity of the appeal site. It would be contrary to the relevant requirements of Saved Policies AM7 and AM14 of the Hillingdon Unitary Development Plan 1998 (UDP), that are contained within Part 2 of the Hillingdon Local Plan 2012 (LP), and The Hillingdon Design and Accessibility Supplementary Planning Document 2008 (HDAS), which seek to ensure that new development provides appropriate levels of parking and does not prejudice highway safety.

#### *Character and appearance*

12. When taken together, Policies 3.5 and 7.6 of the London Plan 2015 (London Plan) and UDP Saved Policies BE23 and BE19 seek a high quality of design in new development that has regard to its context and maintains or enhances the existing local character and street scene. More detailed advice on the design of new residential development is found in the HDAS which is to be read alongside these more general design policies.
13. The appeal site is an irregularly shaped parcel of land, approximately 290 m<sup>2</sup> in area, located adjacent to 92 Pield Road and at the south end of Colham Road. The area is mixed in character, being predominantly residential but with a small terrace of commercial properties immediately adjoining the appeal site and the large campus of Hillingdon Hospital to the south west, on the opposite side of Pield Heath Road. The area around the appeal site is very diverse in architectural style and built form, with the buildings covering a wide age range.
14. The proposed development is a three storey, flat roofed, building of a contemporary design. Whilst this would be different in appearance from the two storey, traditionally built, commercial terrace that adjoins the appeal site to the east, it would be of a similar overall height, and the use of white render on the lower two storeys and grey metal cladding on the third storey would provide some commonality with the adjacent terrace. It would also be of a similar overall height to the red brick, modern, detached house that adjoins the appeal site to the north.
15. Immediately to the west of the appeal site on Colham Road are a number of long, modern, three storey blocks with pitched roofs and finished in brickwork and coloured render, and which differ significantly in appearance from the commercial terrace. Beyond Colham Road there are further blocks of three and four storey buildings. The building on the appeal site, having some shared characteristics with both groups of buildings, would act as a transition between the two.
16. The south side of Pield Heath Road in the vicinity of the appeal site has a markedly different character, with an older two storey building, formerly a public house, adjacent to two mid-twentieth century red brick houses and a new build block of flats in buff brickwork, standing to the east of Colham Green Road. West of Colham Green Road, the Hillingdon Hospital site contains a parking area with trees on the boundary and a number of very large blocks of buildings.

17. Whilst the proposed building would not have features such as traditional pitched roofs, bay window frontages, large window openings and exposed brickwork/render finishes, that feature on some of the nearby buildings, within the overall context of both the immediately adjacent buildings and the wider area, it would add to the existing architectural diversity of the locality and, of itself, the design of the building would be well proportioned and cohesive. The proposed development would, in addition, remove an area of currently unused and slightly unsightly land which would represent a qualitative improvement to the area.
18. The National Planning Policy Framework (the Framework) states that local planning authorities should not attempt to impose architectural styles or tastes and should not stifle innovation. Whilst the Framework does seek to promote and reinforce local distinctiveness, the surrounding area does not have a strong prevailing architectural character.
19. I therefore find that the proposed development would not cause harm to the character and appearance of the area. It would comply with the relevant requirements of Policies 3.5 and 7.6 of the London Plan; Saved Policies BE13 and BE19 of the UDP; and the guidance in the HDAS to achieve a high quality of design in new development that has regard to its context and maintains or enhances the existing local character and street scene. It would also be consistent with the requirement of the Framework, which seeks a high standard of design in all new developments.

*Living conditions of the future occupants*

20. It is common ground between the parties that the proposed development provides a suitable level of internal space to meet the day to day living requirements of the future occupiers. The principle areas in dispute are whether the proposed development provides adequate external amenity space for the future residents and whether there is an adequate outlook from Flat 1. The Council have not raised concerns in respect of the outlook from any of the other flats within the proposed building.
21. Saved UDP Policy BE23 requires that new development provide sufficient external amenity space and this is elaborated on in the HDAS which provides guidelines for the amount of amenity space required for particular types of residential development. In the case of studio and 1 bedroom flats this is 20m<sup>2</sup> per unit. The appellant calculates that there is 160 m<sup>2</sup> of outdoor amenity space. The Council contend that, including the balconies on the upper floor flats, the amenity areas amount to approximately 72 m<sup>2</sup>, as the garden areas for Flats 1 and 2 are adjacent to Colham Road and not private. This would be well below the 120 m<sup>2</sup> guideline. However, even if the Council's figure is the correct one, the HDAS but does allow for exceptions where the development is for small non-family housing, in town centres, that is predominantly made up of one bedroom units.
22. Although the appeal site is not located within a town centre, the proposal would consist of one bedroom and studio flats, which would be described as non-family housing. The appeal site is also within a short distance of a substantial public open space at Colham Green Recreation Ground. The Council recognise that this would provide some mitigation for a reduced level of on-site provision. Whilst I note the Council's point that the open space at Colham Green Recreation Ground is to the south of Pield Heath Road and would not be

suitable for young children, given that the proposed flats are studio and 1 bedroom units, I consider that it is highly unlikely that they would be occupied by families with children.

23. The proposal would provide some useable and private outdoor amenity space and, given the non-family nature of the proposed units and the proximity to a large area of public open space, I am satisfied that this amounts to sufficiently special circumstances to warrant a level of amenity space that is below the HDAS guideline figure and that the development would provide sufficient amenity space to meet the day to day requirements of the future occupiers.
24. The Council's concerns in terms of outlook are restricted to Flat 1. The window in the bedroom of this flat would look towards the shared boundary with the neighbouring property on Pield Heath Road. This has a single storey outbuilding at the rear, resulting in a wall approximately 2 m high on the boundary. The window of the bedroom in Flat 1 would be located approximately 6.5 m from the boundary wall and, as the rear of the adjoining commercial buildings is predominantly open above ground floor level, the outlook from this window would not be excessively constrained.
25. The glossary of terms relating to the Saved Policies in the UDP excludes kitchens with a floor area under 13 m<sup>2</sup> from the definition of habitable rooms. The Council accept that the kitchen area of Flat 1 is less than 13 m<sup>2</sup>. The window of the kitchen area would look out into a long, narrow, space formed by the wall of the proposed new building and an existing, single storey, extension to the side of 92 Pield Heath Road. Whilst this will result in a restricted outlook from this window, it does not serve a principal habitable room. I have had regard to the Council's point that the floor area of Flat 1 would only be slightly above the minimum floor area required by the Nationally Described Space Standard, however, there would be adequate outlook from the other habitable rooms of the flat. Taken as a whole, the proposed flat would not have an unduly poor outlook.
26. I therefore conclude that the proposed development would provide satisfactory living conditions for the future occupiers having particular regard to outlook and the provision of outdoor amenity space. It would comply with the relevant requirements of Saved Policies BE19, BE21 and BE23 of the UDP and the guidance in the HDAS. It would also be consistent with the requirements of the Framework which seeks a good standard of amenity for all occupiers.

### **Other matters**

27. I have had regard to the appellant's point regarding the general thrust of national policy towards increasing the supply of housing. No substantive evidence has been submitted by either party in respect of housing land supply and actual or predicted housing delivery in the area. In any event, six flats would only represent a modest increase in housing supply which would not outweigh the harm that I have found the development would cause to highway safety in the vicinity of the appeal site.

### **Conclusion**

28. Although I have found that the proposed development would not cause harm to the character and appearance of the area and would provide suitable living

conditions for the future occupiers, this would not significantly and demonstrably outweigh the harm that I have found on highway safety grounds.

29. For the above reasons and taking account of all other matters raised, I conclude that the appeal should be dismissed.

*John Dowsett*

INSPECTOR