
Appeal Decision

Site visit made on 10 October 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 15th November 2016

Appeal Ref: APP/U5930/W/16/3155494

Police Station, 360 Forest Road, Walthamstow, London E17 5JQ

- 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 Feroz Yusuf against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 151615, dated 29 May 2015, was refused by notice dated 2 February 2016.
 - The development proposed is "conversion of former Police Station into 21 residential units (4 x 3 bed, 11 x 2 bed and 6 x 1 bed) involving extensions at ground, first and second floor level. Provision of car parking for disabled persons, cycle storage and refuse collection area".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Feroz Yusuf against the Council of the London Borough of Waltham Forest. This application is the subject of a separate Decision.

Procedural Matters

3. Interested parties raised concerns with respect to whether the appeal is valid based on the date the appeal was made. It is evident that the appeal and essential supporting documents were submitted on the 29 July 2016 and therefore, received within the deadline for an appeal. I proceed with the determination of the appeal on that basis.
4. The description of development and site address provided on the application form have been replaced in subsequent documents. I consider the amended description and site address provided by the Council's decision notice and the appeal form are more precise and adopt them accordingly.
5. During the appeal process, the appellant introduced revised drawings. The resultant changes would materially alter the development. The amendments involve retaining the existing height of the wall immediately adjacent to 115 Greenleaf Road by incorporating a splayed section of roof from the south - south - east elevation, together with an increase in height of the existing wall along the boundary with 1 Wolsey Avenue and Forest Road Medical Centre through use of glass block bricks. The Planning Inspectorate's guidance¹

¹ Procedural Guide – Planning appeals – England (published 23 March 2016) - Annex M

makes it clear that if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh application. Furthermore, the guidance also states that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

6. The revised drawings appear to have been subject to informal consultation with interested parties. However, concerns have been expressed with respect to access to the revised drawings and the limited opportunity to comment on the changes. Consequently, taking account of the Wheatcroft Principles ², I conclude that the proposed amendments should not be considered as part of this appeal given the possibility of prejudice to interested people. I, therefore, determine the appeal on the basis of the proposal as set out in the application and upon which the Council made its decision.
7. From appeals I am determining elsewhere in London, I am aware that the London Plan 'Draft Interim Housing' Supplementary Planning Guidance document (2015) referred to in the Council's evidence has been superseded by the publication of the London Plan Housing Supplementary Planning Guidance (Housing SPG), March 2016. However, the relevant guidance within the Housing SPG remains similar and so no parties has been prejudiced by this change in circumstances.

Main Issues

8. The main issues of this appeal are:
 - the effect on the living conditions of occupiers of neighbouring properties in Greenleaf Road and Wolsey Avenue with particular regard to daylight, sunlight and outlook;
 - whether the development would provide for a satisfactory living environment for its future occupiers with particular regard to density and amenity space, and;
 - whether the development should make provision for affordable housing and if so, whether it should be provided on-site.

Reasons

Background

9. The appeal site is a former police station located on the south side of Forest Road (A503) at its junction with Greenleaf Road. The former police station is locally listed by the Council and closed in 2011 following an arson attack. It is common ground that the existing buildings could not be adapted to meet the requirements of modern policing and therefore, are surplus to Metropolitan Police requirements. Access for vehicles to the site is via Greenleaf Road into a small open yard area that is enclosed by the existing buildings and provides limited on-site parking.
10. The main building comprises three storeys with pitched and hipped roofs to the Forest Road frontage, which reduces to a flat roofed two storey section with a

² Derived from *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment and Harborough DC* (1982) P&CR 233

basement along the elevation facing Greenleaf Road. A second building is arranged in an L-shape adjoining the boundaries with 115 Greenleaf Road, Nos. 1, 3 and 5 Wolsey Avenue and the car park of the part three storey and part four storey Forest Road Medical Centre located at the junction of Wolsey Avenue with Forest Road. The second building is predominantly two storeys in height and flat roofed with single storey annexes. The building is linked to the main building by small single storey storage units.

11. The appeal proposal seeks extension and conversion of the main building, together with extension and part demolition of the second building and its existing linked sections. This would result in a three storey building linked at first and second floor levels consisting of 21 residential flats in total (6 x 1 bedroom, 11 x 2 bedroom and 4 x 3 bedroom).
12. The original Victorian Jacobean style of the three storey section of the building to the Forest Road frontage would be retained with only minimal alterations comprising replacement of existing windows and the insertion of a new window to match existing. The predominant changes to the external elevations of the building would be an increase in height of the building to three storeys along Greenleaf Road with a contemporary glazed frontage. In addition, the proposal would also result in an increase in height to three storeys adjoining the boundaries with 115 Greenleaf Road and 1, 3 and 5 Wolsey Avenue.
13. The contrasting character of Greenleaf Road, which has a varied mix of buildings associated to Greenleaf Primary School opposite of different scale, height and form, offers an opportunity for an original design when providing a transition to the two storey residential terraced properties to the south. A contemporary addition of subservient height and form to the section of the building on the Forest Road frontage with a set back from the retained section along Greenleaf Road would not, therefore, appear out of place or unsympathetic to the locally listed building or its surroundings.

Living conditions

14. The second building provides the boundary with the rear gardens of 115 Greenleaf Road and Nos. 1, 3 and 5 Wolsey Avenue at a maximum height of approximately 7.8 metres above land levels. The proposal as indicated on the plans upon which the Council made its decision, would increase the maximum height of the adjoining wall by close to 0.9m along these boundaries.
15. The existing wall is already a considerable expanse of built form that is an overbearing feature creating a sense of enclosure upon the outlook from the rear elevation and rear gardens of the neighbouring residential properties. The existing wall also has an overshadowing effect upon 1, 3 and 5 Wolsey Avenue in the mornings across the rear gardens due to its position to the east of the properties. The increase in height and massing of the wall would exacerbate these effects and, therefore, would have a detrimental impact on the outlook from the properties and the enjoyment of their rear gardens. Consequently, the proposal would have a harmful effect on the existing living conditions of occupiers of 115 Greenleaf Road and Nos. 1, 3 and 5 Wolsey Avenue.
16. The proposal does not involve the insertion of windows within the walls facing 115 Greenleaf Road and Nos. 1, 3 and 5 Wolsey Avenue. However, following the demolition of part of the existing second building, there would be a lower section of wall along part of the common boundary with 1 Wolsey Avenue.

The proposal includes glazed winter gardens (i.e. enclosed glazed balconies) adjacent to the lower section of the wall serving first and second floor flats. The position of these winter gardens would provide opportunity for direct overlooking of the rear elevation of 1 Wolsey Avenue and its rear garden, which would result in a harmful loss of privacy given the relatively close proximity. Nevertheless, I am satisfied that this potential harm could be mitigated by condition of fixed and obscure glazing if the appeal were allowed.

17. The section of the building which faces Greenleaf Road has a rear elevation which includes bedroom windows that face towards the lowered section of the wall where it adjoins 1 Wolsey Avenue and the car park of the Medical Centre. There would also be views from bedroom windows in the upper floors of the rear elevation of the section of the building which fronts Forest Road towards the rear elevations and gardens of Nos. 1, 3 and 5 Wolsey Avenue. However, the views from the bedroom windows of the development towards the neighbouring properties and their gardens would be at oblique angles and with significant separation distances involved. In such circumstances, on balance, the relationship between the development and surrounding properties would not have a detrimental effect on the living conditions of occupiers of neighbouring properties through increased overlooking or loss of privacy.
18. The occupation of a large number of flats has the potential to increase general levels of activity in the local area. However, the proposal involves conversion of a building with a substantial footprint within the site and which had a historic use relating to a 24 hour operation. This included vehicle access from Greenleaf Road, together with general access from Forest Road and at the rear of the building, which would have generated significant noise and activity. In comparison, the activity and vehicle movements relating to the development would be reduced given the residential use and the car parking for only 2 vehicles. Furthermore, the design and scale of the building would provide a buffering effect to noise generation within the courtyard area. Consequently, there is no substantiated evidence that the proposal would result in noise and disturbance to an extent that would be harmful to the living conditions of occupiers of neighbouring properties. However, the absence of concern in this respect is a neutral factor which does not justify the harm otherwise identified.
19. Having taken all of the above into account, I conclude that the development would result in an unacceptable impact upon the living conditions of the occupiers of neighbouring properties, due to the harm upon the outlook from 115 Greenleaf Road and Nos. 1, 3 and 5 Wolsey Avenue, and the enjoyment of their rear gardens. The proposal would, therefore, conflict with Policy CS13 of the Waltham Forest Local Plan Core Strategy (CS), adopted March 2012, Policies DM29 and DM32 of the Waltham Forest Local Plan Development Management Policies (DMP), adopted October 2013 and guidance within the Waltham Forest Urban Design Supplementary Planning Document (SPD), adopted February 2010. When taken together the policies seek that new development ensures satisfactory amenity is provided for surrounding occupiers and addresses the potential impact on neighbouring amenity, including with respect to daylight/sunlight, outlook and privacy for homes and gardens. The policies are consistent with the Framework which seeks a good standard of amenity for all existing and future occupants of land and buildings.

Living environment

20. The internal layout of each flat within the development, except a single 1 bedroom 2 person flat located at second floor level of the front section of the building, would meet the minimum requirements of Gross Internal Area (GIA) required by Policy DM7 of the DMP. These minimum requirements are consistent with the nationally described space standards³ adopted by The London Plan. On balance, I consider that a shortfall of 0.43 sq.m within a single 1 bedroom 2 person flat would be relatively minor and largely imperceptible. The flats would also have appropriate rooms sizes, outlook and light provision with only oblique angles of interface between windows to ensure adequate levels of privacy. Consequently, the development would provide a satisfactory living environment for future residents with respect to proposed internal living spaces.
21. Notwithstanding the above, Policy DM7 of the DMP also includes external amenity space standards, within which it seeks that all homes, included flatted development should have access to an element of private space. In this regard, 11 of the flats (9 x 2 bedroom and 2 x 3 bedroom) would have access to a winter garden (balcony). However, 2 of the winter gardens (serving 2 x 2 bedroom flats) would be below the minimum balcony depth of 1.5m required by the Housing SPG. In addition, 10 flats (6 x 1 bedroom, 2 x 2 bedroom, 2 x 3 bedroom) would not be served by private amenity space.
22. The privacy and form of amenity space required to serve flats can reasonably include communal space as an alternative. Approximately 30 sq.m would be provided as formal landscaping and the appellant has also indicated potential use of the remaining courtyard area. However, the details of any shared surfaces and whether they would be suitable to provide a safe and functional amenity space for residents is limited. In any case, Policy DM7 of the DMP is clear that areas for vehicle circulation and parking should be excluded from the calculation of external amenity space. This limits the weight I can offer to any potential use of the courtyard as amenity space beyond the landscaped area indicated on the submitted plans. In such circumstances, based on the evidence before me, the development would not achieve the requirements of Policy DM7 of the DMP in Table 8.3 for a minimum 10 sq.m of amenity space to be provided per bedroom via private and communal amenity space.
23. The Housing SPG at paragraph 2.3.32 states that in exceptional circumstances, where site constraints make it impossible to provide private open space for all dwellings, a proportion of dwellings may instead be provided with additional internal living space equivalent to the area of the private open space requirement. The requirements of the Housing SPG are calculated on the basis of 5 sq.m for 1-2 person dwellings with an extra 1 sq.m provided for each additional occupant. These are lower than the requirements of Policy DM7 of the DMP. Nevertheless, of the 10 flats without private amenity space and the 2 flats with substandard balcony depths, only 3 flats (1 x 2 bedroom, 2 x 3 bedroom) provide sufficient additional internal living space above the minimum requirements of the nationally described space standards. The development, therefore, would not provide a satisfactory living environment for future residents with respect to access to external amenity space.

³ Technical housing standards – nationally described space standard, DCLG 2015

24. Policy DM7 of the DMP permits financial contributions towards enhancement or upgrade of the provision of local open space(s) in the vicinity of the development where external amenity space standards cannot be provided on site. A planning obligation submitted in the form of a Unilateral Undertaking (UU)⁴ includes a financial contribution of £25,000 towards enhancements to Green Leaf Park. However, there is no evidence before me relating to compliance with restrictions on five or more separate planning obligations for that project, or type of infrastructure in Regulation 123 of the Community Infrastructure Levy Regulations 2010 and the associated guidance contained in National Planning Practice Guidance (PPG)⁵. In such circumstances, I can attribute little weight to the planning obligation relating to proposed enhancements to Green Leaf Park.
25. In reaching the above findings, I have also taken into account that the childrens play area nearby on Greenleaf Road is existing and larger areas of public open space at William Morris Close and Lloyd Park are available in the wider area and within walking distance of the site. Nevertheless, the presence of existing public open space in the locality does not offset the harm arising from an absence of adequate private and communal amenity space to serve a significant proportion of the flats.
26. The development would consist of a net density of 420 habitable rooms per hectare (hrph). This falls within the density range in the London Plan density matrix of up to 450hrph for locations defined as urban and with a PTAL rating of 3 reflecting moderate accessibility to public transport. However, as the evidence before me does not indicate adequate private or communal amenity space within the development to serve the individual flats, the proposal would consist of an over-intensive development of the site.
27. Having taken all of the above into account, I conclude that the development would not provide for a satisfactory standard of living conditions for its future occupiers, due to the inadequate provision of private and communal amenity space to serve the proposed flats. The proposal, therefore, would conflict with Policies CS2, CS13 and CS15 of the CS, and Policies DM7 and DM29 of the DMP, together with guidance in the Waltham Forest Urban Design SPD and the London Housing SPG. The policies are consistent with the Framework which seeks a good standard of amenity for all future occupants of land and buildings.

Affordable housing

28. Policy CS2 of the CS and Policy DM3 of the DMP when taken together seek 50% affordable housing, but with assessment on a site by site basis in terms of viability, and with priority for on-site provision before off site contributions.
29. The development consists of net additional floorspace of approximately 411 sq.m and would be eligible for the vacant building credit as set out in the PPG⁶. This is noting the Secretary of State's successful appeal to the Court of Appeal on 11 May 2016, overturning the previous High Court judgment on 31 July 2015 on applications by West Berkshire District Council and Reading Borough Council for judicial review of the Written Ministerial Statement issued on 28 November 2014.

⁴ Unilateral Undertaking signed and executed

⁵ Community Infrastructure Levy, Paragraphs 093-102, Revision date 12 06 2014

⁶ Planning Obligations, Paragraphs: 021 - 023, Revision date: 19 05 2016

30. The appellant, whilst contesting the need for the financial contribution toward affordable housing on the grounds of viability, provided a planning obligation in the UU for a contribution to off-site affordable housing of £249,000. The total value of contributions in the UU of £274,000 accords with the conclusion of the Independent Review of Economic Viability undertaken by BPS Chartered Surveyors (dated 15 December 2015). This review was instructed by the Council following submission of a Financial Viability Report prepared by Section 106 Management (dated 6 November 2015) on behalf of the appellant.
31. There is no dispute between the main parties with respect to residential value assumptions (including average sales rate) for the development, build costs and developer profit (20% GDV) identified by the appellant. However, the appellant's evidence identifies that it would not be viable for the development to provide affordable housing based on calculations accounting for the purchase price of the site in June 2013, together with an uplift of 33% to reflect the Nationwide House price indicator.
32. The contribution value in the UU broadly reflects a residual value of the development of £725,700 identified in the BPS report with a deduction of a lower benchmark land value than the purchase price. The lower benchmark land value appears to be based upon BPS calculations relating to existing use value as offices of £450,000. Although such an approach does not conflict with the PPG⁷, the existing use value is significantly lower than the average value of sites based on land transactions in the BPS report of £889,464, which includes reductions applied to reflect those sites sold with planning permission / outline planning permission. The adjusted transactions, although reflective of site specific circumstances including different policy requirements and planning obligations, provide an indication of land values for a realistic alternative use.
33. The average land transaction calculation in the BPS report does indicate that the appellant may have overbid for the site aligned to development aspiration. Consequently, there would be a significant overestimation of the benchmark land value in the appellant's viability calculations by applying a further uplift. Nevertheless, based on the evidence before me, a figure of £889,464 would represent a more reasonable benchmark land value to adopt to reflect residential development of the site rather than an existing use value based on refurbished offices. In reaching this view, I have taken into account that the figure of £889,464 is identified in the Council's officer report as the agreed benchmark, and that the existing condition of buildings would necessitate significant investment to facilitate re-use.
34. With regard to the above, a benchmark land value above the residual value of the scheme of £727,700 identified in the BPS report would leave no margin for a financial contribution toward affordable housing. Consequently, based on the evidence before me, the development would be unable to make a contribution toward affordable housing, whilst providing a competitive return to enable the development to be deliverable.
35. I conclude that the development would be unable to make provision for affordable housing either on-site or via a development contribution, based upon an assessment of viability. I, therefore, consider that the planning obligation provided would not be necessary with regard to paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL)

⁷ Viability, Paragraphs 023-024, Revision date 06 03 2014

Regulations 2010. In the particular circumstances of this case, the absence of a contribution toward affordable housing would not, therefore conflict with Policy CS2 of the CS and Policy DM3 of the DMP.

Other Matters

Social and Economic Benefits

36. The proposal would deliver social and economic benefits in a relatively accessible location by providing up to 21 new homes. In this respect, the development would contribute to identified housing needs through re-use of an existing redundant building, whilst supporting local services and businesses. In addition, there would also be short term local economic benefits arising from the necessary construction activity required to deliver the development. There would also be economic benefits from CIL revenue. However, based on my previous conclusion, the development would not make a contribution to affordable housing and therefore, would have no benefit in that respect.
37. Having taken all of the above into account, I attach significant weight to the social and economic benefits of the development associated to the proposal, including the potential for re-use of the building and addition to housing supply. However, on balance, I consider that the extent of these benefits do not outweigh or justify the harm identified to the living conditions of occupiers of neighbouring properties and the unsatisfactory living environment for future residents.

Car parking

38. The appeal site is located in an area with moderate accessibility to public transport provision. The proposal includes 2 disabled parking spaces on site, but no other off street parking to serve the development. In this respect, the Council consider the development is effectively 'car free' housing with the site being within the Walthamstow Town Centre Controlled Parking Zone (CPZ). A planning obligation in the UU accompanying this appeal includes restrictions relating to 'car free' housing. Nevertheless, as I intend to dismiss this appeal based on the harm identified with respect to the main issues, I need not pursue this matter any further.

Conclusion

39. I have identified economic and social benefits arising from the provision of 21 new homes to which I attach significant weight. However, I have found an unacceptable impact with respect to the effect on the living conditions of occupiers of neighbouring properties in Greenleaf Road and Wolsey Avenue and that the development would not provide for a satisfactory living environment for its future occupiers. The harm arising from the development reflects conflict with the development plan and the Framework, when taken as a whole, which outweighs the benefits and therefore, is overriding.
40. For the reasons set out above and having taken all other matters into account, I conclude that the appeal should be dismissed.

Gareth Wildgoose

INSPECTOR