
Appeal Decision

Site visit made on 4 October 2016

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 2nd December 2016

Appeal Ref: APP/N1920/W/16/3154681

Land adjacent to 171 Mutton Lane, Potters Bar, Hertfordshire EN6 2AN

- 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 P Viner against the decision of Hertsmere Borough Council.
 - The application Ref 15/1200/FUL, dated 10 July 2015, was refused by notice dated 20 June 2016.
 - The development proposed is the demolition of existing double garage belonging to no. 171 and erection of 2 storey building comprising 5 x 2 bed flats.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing double garage belonging to No. 171 and erection of a 2 storey building comprising 5 x 2 bed flats at land adjacent to 171 Mutton Lane, Potters Bar, Hertfordshire EN6 2AN in accordance with the terms of the application, Ref 15/1200/FUL, dated 10 July 2015, subject to the conditions set out in the schedule to this decision letter.

Procedural Matter

2. At my site visit I saw that a building had already been erected on site with the external elements substantially complete. Notwithstanding this, I have determined the appeal on the basis of the submitted drawings.

Main Issue

3. The main issue is whether the proposal should make provision for affordable housing.

Reasons

4. In refusing permission, the Council indicated that suitable provision for affordable housing had not been secured. For viability reasons, the principle of a financial contribution towards off site affordable housing provision was accepted by the Council.
5. However, following the Court of Appeal's judgement of 11 May 2016, wherein the Secretary of State successfully appealed against the judgment of the High Court of 31 July 2015¹ () it follows that considerable weight should be given to the Secretary of State's Written Ministerial Statement (WMS) of 28 November 2014 and the updated Planning Practice Guidance (PPG) which indicate that

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council

planning obligations of this type should not be sought from development of this limited scale.

6. The Council acknowledges that the WMS is a material consideration. However, in light of a recent SHMA (Strategic Housing Market Assessment), which it indicates a significant local need for affordable housing in the Borough, it has given greater weight to Policy CS4 of the Hertsmere Local Plan Development Plan Document Core Strategy (2013).
7. Notwithstanding that, as a matter of principle, the need for affordable housing is not unusual or specific to Hertsmere. Whilst the starting point for the determination of planning applications should be the development plan (and that should be given significant weight), I consider that it does not outweigh the WMS and PPG which are the clearest and most up-to-date expressions of national planning policy.
8. Therefore, the WMS and the PPG should be given more weight than the identified development plan conflict and I conclude that an affordable housing contribution should not be required from this development.

Conditions

9. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. Conditions relating to the external materials, means of enclosure, landscaping, refuse storage are all appropriate in the interest of the character and appearance of the area. I also agree that a condition relating to surface water drainage is necessary for environmental reasons. Given the scope of these conditions, it is not necessary for the details of any of these to be agreed prior to the commencement of works.
10. The suggested contaminated land condition refers to a remediation strategy which does not appear to form part of the application. However, the Council's committee report relates back to a remediation strategy from the previous planning permission². Given that there is a clear need to ensure that the ground conditions are safe for the future occupiers of the development I have therefore amended the suggested condition to reflect this and to ensure that it meets the requirements of paragraph 206 of the National Planning Policy Framework.
11. I have also considered the Council's suggested conditions in respect of tree retention and protection. However, I consider that the measures suggested are not necessary to make the proposed development acceptable in planning terms.

Conclusion

12. Taking all matters into consideration, whilst there is conflict with Policy CS4, this is outweighed by the WMS and the PPG. Therefore, for the reasons given above I conclude that the appeal should be allowed.

Chris Forrett

INSPECTOR

² 15/0297/FUL

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan and Block Plan (both numbered 1030-111; Proposed Site Plan 1030-113; Proposed Floor/roof plans 1030-116; Proposed Rear Elevation Plan (1030-111); and Proposed Elevations Plan 1030-117.
- 3) The development hereby permitted shall be carried out in accordance with the following materials as approved on 4th February 2016 under application 15/2019/DOC unless otherwise approved in writing by the local planning authority:-
 - (i) Roof tiles - Redland brown/farmhouse red smooth tile;
 - (ii) Windows - white upvc;
 - (iii) Guttering and downpipes - black upvc
- 4) Prior to the first occupation of any part of the development, details of all materials to be used for hard surfaced areas within the site including roads, driveways and car parking area shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) Prior to the first occupation of any part of the development, details of all walls (including retaining walls), fences, gates or other means of enclosure to be erected in or around the development shall be submitted to, and approved in writing by, the local planning authority. The walls (including retaining walls), fences, gates or other means of enclosure shall be erected as approved and shall thereafter be permanently retained for the life of the development.
- 6) Prior to the first occupation of any part of the development hereby permitted, a scheme of landscaping, which shall include details of both hard and soft landscape works and earthworks, shall be submitted to, and approved in writing by, the local planning authority. The scheme as approved shall be carried out in the first planting season following the first occupation of the development. Any trees, shrubs or plants that die within a period of five years from their planting, or are removed and/or become seriously damaged or diseased in that period, shall be replaced (and if necessary continue to be replaced) in the first available planting season with others of similar size and species, unless the local planning authority gives prior written permission for any variation.
- 7) Prior to the first occupation of the development details for the storage and collection of refuse shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such unless otherwise first approved in writing by the local planning authority.
- 8) Prior to the first occupation of the development details of a scheme for the on-site storage and regulated discharge of surface water run-off has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

- 9) No part of the development shall be occupied until:
- (i) The remediation work as outlined in the remediation strategy (approved under planning permission 15/0297/FUL) shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance.
 - (ii) Once remedial works have been completed a validation report shall be submitted to the planning authority to demonstrate compliance with the approved remedial strategy.
 - (iii) If during any works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and the remediation scheme amended.