

Appeal Decision

Site visit made on 8 June 2016

by G Rollings BA(Hons) MA(UD) MRTPI

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

Decision date: 01 March 2017

Appeal Ref: APP/B5480/W/16/3144492

Land at Northwood Avenue, Elm Park, Hornchurch, RM12 4RX

- 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 Row Properties Investments LLP against the decision of the Council of the London Borough of Havering.
 - The application Ref P1517.15, dated 14 October 2015, was refused by notice dated 18 December 2015.
 - The development proposed is the erection of nine dwellings and associated access, parking and landscaping arrangements.
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Decision

1. The appeal is dismissed.

Main issues

2. The main issues are:
 - The effect of the proposed development on the character and appearance of the area;
 - Whether the proposed development would be prejudicial to the development of a scheme on an adjoining site at St Nicholas Avenue;
 - The effect of the proposed development on the supply of public parking spaces in the Elm Park district centre, and on the centre's viability; and
 - The appropriateness of the planning obligation.

Reasons

Character and appearance

3. The appeal site is on the south-western corner of Northwood Avenue and St Nicholas Avenue, and is currently occupied by a 'pay and display' public car park containing 35 spaces, with vehicular access to both streets. A row of recycling bins and an electricity substation abut the southern and eastern boundaries, respectively. A series of one and two-storey buildings, occupied by mix of retail, commercial and residential uses, occupy the adjoining site to the south, with a three-storey retail and residential parade opposite the site, on St Nicholas Avenue. Semi-detached and terraced houses with rear gardens face the site across Northwood Avenue, and abut the site to the west.
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4. The proposed development comprises a two-storey flatted building addressing the street intersection, flanked on both street frontages by three-storey terraced houses. Vehicular access from Northwood Avenue, alongside the retained existing substation, would serve 4 car parking and 20 cycle parking spaces for residents of the development, with a communal garden and landscaping space to the rear and along the street boundaries.
5. Most of the buildings in the district centre appear to date from a single period, based on their similar appearance, and comprise retail and residential parades constructed of dark brick with pitched roofs. The roundabout at the intersection of St Nicholas Avenue, Elm Park Parade and The Broadway, close to the southern boundary of the site, is characteristic of this form of development and is a highly legible part of the centre. Although most of the buildings conform to a homogenous architectural style, there are some deviations where newer infill buildings have been constructed, but such instances are rare within the immediate area.
6. The appeal scheme would have a modern appearance, but it would incorporate elements such as pitched roofs which would appear similar to existing buildings. The development would have its largest scaled elements facing the intersection corner of the site, and would have a similar roof height as the main roof ridges of the adjacent buildings on both street boundaries. The scale of the development would be transitional between the higher buildings in the Elm Park district centre, and the low residential buildings to the north and west of the site, which is appropriate for this edge-of-centre site.
7. The proposed scheme would provide sufficient visual interest on its façades and not appear overly bulky and paired with neighbouring buildings. As such, the development would complement this character and not appear out of place in its context. Its scale and mass would be appropriate relative to the existing surrounding development. I therefore conclude that the proposed development would not have a harmful impact on the character and appearance of the area. There would be no conflict with the Council's adopted *Core Strategy and Development Control Policies Development Plan Document (CS/DCP) (2008)* Policy DC61, which requires development to maintain, enhance or improve the character or appearance of the local area.

Effect on the development potential of the adjoining site

8. The council has referred to a property adjoining the southern boundary of the appeal site. This property currently accommodates a dance hall and was the subject of previous applications for planning permission. The most recent of these (Council ref. P1362.14) was approved by the Council subject to the completion of the section 106 agreement. However, the planning obligation was not signed and the permission was not issued. As such, although the Council has advised that it considers the subject of the application, being the extension of the building at first floor level to provide residential accommodation, to be acceptable development in principle, there is no extant permission for development on the site.
9. The Council resolved to approve the development in December 2014, and I have considered the main parties' representations on the likelihood of a planning obligation being undertaken by the applicant. The appellant has stated that the applicant of the approved proposal is found that the development would be unviable, although no evidence has been provided to

support this claim. Nonetheless, I have noted the appellant's comments regarding the structural constraints of the building which could make its redevelopment difficult. Together with the extended period that has elapsed since the Council's decision, it appears unlikely that a completed section 106 agreement would be forthcoming.

10. The absence of an extant permission incorporating a section 106 agreement on the adjoining site means that I can give this consideration only limited weight. On balance, I therefore conclude that there is only a minimal likelihood of the approved scheme being granted permission, that there is a low level of risk that the proposed appeal development would be prejudicial to that scheme and that, on balance, the associated risk of detrimental effects on the living conditions of future residents would be similarly low. There would also be no conflict with CS/DCP Policy DC61.

Effect on district centre parking and viability

11. The proposed development would replace the existing 35-space public car park which currently occupies the appeal site. This is a ticketed 'pay-and-display' car park which offers users free parking for the first 30 minutes, and paid parking thereafter. All spaces were occupied at the time of my visit, which was during weekday shopping hours, and I have noted the comments from the Council, car park users, and business operators regarding the high appreciation of this facility. I also visited the similarly sized public car park located approximately 150 metres north of the site, next to Elm Park Library, which was sparsely occupied. There is a good amount of on-street parking around the district centre, nearly all of which was occupied.
12. The public parking spaces would not be replaced within the appeal development and would result in a net loss of 35 parking spaces in the district centre. Based on the usage figures of both the appeal site and library car parks, it would appear on the surface that there would be sufficient spare capacity within the library car park for displaced users of the appeal site to find available parking within the area. However, the Council considers that the library car park's larger comparative distance from the district centre commercial and retail uses results in it being less convenient and therefore less attractive to users.
13. The Council is in the process of preparing a new Local Plan, for which evidence-based studies have been commissioned. One such study is the Havering Retail and Commercial Leisure Needs Assessment (2015). Although its findings have not been tested as part of the Local Plan examination process, it is nonetheless a comprehensive and relatively recent survey of existing and likely future needs, and I have given it moderate weight in my decision. In respect of the Elm Park district centre, it notes that although there are some unoccupied units, it does serve the retail needs of surrounding residents. However, the centre is currently lacking in other areas such as night-time economy and perceptions of safety, and would benefit from careful monitoring by the Council. Policy CP4 of the adopted CS/DCP includes similar observations about the health of the district centre.
14. The appellant notes that the proposed residential units would potentially increase demand for the services offered by the local centre. I do not dispute this, but consider it unlikely that this demand would negate the loss of the demand from a greater number of households which are users of the current

car park. I also acknowledge that the walking distance from the library car park to the edge of the district centre would be within acceptable limits, but this does not consider less mobile users or the increased distances from there to destinations further into the centre.

15. CS/DCP Policy DC33 requires proposals involving the conversion of car parks to other uses to demonstrate compliance with three criteria. In respect of the first and second criteria, it is clear that there is alternative parking provision, despite its shortcomings, and the existing spaces are not required to meet the parking overspill of local residential developments; as such, the proposal would not conflict with these two requirements. The third is invoked when the Council has identified that the parking is surplus to requirements. This is not the case in this instance, and therefore the loss of the car park and its proposed redevelopment would conflict with the policy.
16. I acknowledge that although the Council is the operator of the car park, it does not own the appeal site, and that the owner is seeking an alternative use. However, the current occupation of the site by the car park fulfils a particular need and function for parking which is close to the district centre, given its popularity. When considered in conjunction with the concerns about the health of the centre, and the convenience and likelihood of existing users migrating to the library car park, its loss could further reduce the attractiveness of the centre to users. It may be that the car park ceases operation in the future when the lease is terminated; however, this is not a given, and I have based my determination on the current circumstances.
17. I therefore conclude that the proposed development would have a detrimental impact on the supply of public parking spaces in the Elm Park district centre, and on the centre's viability. It would conflict with CS/DCP Policy DC33 for the reasons given above, as well as CS/DCP Policy CP4, and Policy 2.15 of *The London Plan* (2015). Together, these policies seek to ensure the vitality of centres and the positive contribution of development to their future health, amongst other factors.

Planning obligation

18. The Council has advised that a planning obligation is required to mitigate demand from the development for local education provision, and that the contribution would be used for a specific school project local to the appeal site. It has provided evidence base documents demonstrating a local shortage of school places. These were produced for a now out-of-date planning obligations supplementary planning document (SPD). Although the Council considers that its identified priorities are still relevant, I am concerned that in the absence of the SPD or any up-to-date adopted alternative, there is no robust strategy in place to justify the amount sought or the mitigation of demand for school places.
19. Notwithstanding, a section 106 planning obligation (unilateral undertaking dated 22 April 2016) has been submitted by the appellant. This allocates £54,000 to be used towards primary and secondary school places and provision. Its necessity and lawfulness is questioned by the appellant. Although it relates to a 'pooled' form of contribution, pursuant to regulation 123 of the Community Infrastructure Levy (CIL) Regulations 2010, the Council has advised me that has put into place a monitoring system to ensure that no

more than five separate contributions are used on any identified single project. No project has been identified in this case.

20. I appreciate the Council's concerns that it is not within its gift to determine when the contribution would be received, and therefore whether a specific identified target had already reached the limit of five funding sources. It has provided several recent appeal decisions in which the intended approach was supported. However, these relate to the provision of a single dwelling¹, and the absence of a section 106 agreement² and are not therefore directly relevant to this appeal. There is no evidence before me to suggest that the development would be specifically used to mitigate the demand generated by the proposed development; rather, it would contribute to mitigating borough-wide demand. I have not been provided with any detailed evidence to define the extent of any deficiencies in education provision within the area local to the appeal site. Accordingly, I cannot be certain that the contribution would be directly related to the development.
21. Consequently, notwithstanding the aims of development plan policy, I am unable to conclude that a planning obligation seeking to provide this contribution would comply with regulation 122 of the CIL Regulations. Accordingly, I cannot take the obligation into account in determining the appeal.
22. In relation to the development plan, CS/DPD Policy DC29 refers to the out-of-date SPD and its detailed guidance, and Policy DC72 states that contributions should be sought in circumstances where the relevant statutory tests can be satisfied, which is not the case in this instance. Although it is possible that the guidance and amounts set out within the evidence base documents remain applicable, there is no statutory framework under which an appropriate contribution can be requested in this instance.

Other issues

23. The appellant has pointed out that there would be economic, social, and environmental benefits resulting from the development. However, in balancing these against the loss of the car park and its effects, they do not negate or ameliorate the harm that I have identified.

Conclusion

24. I have noted the absence of harm in the proposal's effects on local character and appearance and the development of an adjoining site. However, the absence of harm, along with the benefits identified previously, do not outweigh my concerns relating to its impact on local parking supply and the viability of the district centre. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G Rollings

INSPECTOR

¹ Appeal ref: APP/B5480/W/15/3132642; decision date: 8 December 2015.

² Appeal ref: APP/B5480/W/15/3004782; decision date: 6 February 2016, and Appeal ref: APP/B5480/W/15/3003374; decision date 19 August 2015.