
Appeal Decision

Site visit made on 10 January, 2017

by S. J. Buckingham, BA (Hons) DipTP MSc MRTPI FSA

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

Decision date: 20th April, 2017

Appeal Ref: APP/W5780/W/16/3156858
Malcolm Way, Wanstead, London, E11 1PW

- 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 Spring Valley Ltd. against the decision of the Council of the London Borough of Redbridge.
 - The application Ref: 3845/15 dated 30 September, 2015 was refused by notice dated 17 August, 2016.
 - The development proposed is a top storey flat roofed extension to the six existing three storey blocks situated on Malcolm Way; incorporating the addition of 20 new residential units, four flats per block A, B & C, three flats per block D & E and two flats per block F.
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Decision

1. The appeal is allowed and planning permission is granted for a top storey flat roofed extension to the six existing three storey blocks situated on Malcolm Way; addition of 20 new residential units, four flats per block A, B & C, three flats per block D & E and two flats per block F at Malcolm Way, Wanstead, London E11 1PW in accordance with the terms of the application, Ref: 3845/15 dated 30 September, 2015 and the plans submitted with it, subject to the conditions set out in the schedule to this decision.

Procedural Matters

2. A signed and completed S106 Unilateral Undertaking (UU) has been submitted by the appellant in respect of a financial contribution for affordable housing. The Council were given the opportunity to respond to this. I consider this matter below.
3. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description has not changed, but, nevertheless, a different wording has been entered. None of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application, albeit slightly amended for the purpose of clarity.

Main Issue

4. The main issue is whether or not the proposal would make adequate provision for affordable housing.
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Reasons

5. The flats at Malcolm Way are a group of simply designed, late twentieth century blocks in a well-tended, sylvan setting. They have easy access to Snaresbrook tube station and High Street by a footpath at the south-west corner of the site. The proposed 20 new flats would be created on the roofs of the existing blocks.

Provision for affordable housing.

6. The parties have agreed that, due to the nature of the proposed construction and the management arrangements of the existing blocks, on-site delivery of affordable homes would not be appropriate. The main issue to address therefore is the scale of financial contribution to be provided by the appellant towards affordable housing off site.
7. The appellant submitted a viability appraisal prepared by Aspinall Verdi (the Viability Appraisal) which initially calculated that a small surplus would be generated, enabling a contribution of £108,270 towards affordable housing. Following recommended adjustments from the independent review of this assessment by BNP Paribas, commissioned by the Council, and carried out on the basis of Residual Land Value, the appellant revised the appraisal model to identify a surplus of around £298,000.
8. However, BNP Paribas' assessment identified a Residual Land Value for the proposed scheme of £909,000, which, when benchmarked against a site value of around £414,000 indicated that the proposed scheme would generate a surplus of £495,000. The appellant has accepted this conclusion, and has offered this sum by way of a S106 Agreement.
9. The Council however states that a financial contribution of this size would allow it to purchase 1.85 properties through its Purchase and Repair Scheme, equating to a 9.25% contribution to affordable housing, or would allow the provision of 2.5 new-build properties, equivalent to a 12.5% contribution to affordable housing. Policy SP8 of the Core Strategy Development Plan Document 2008 (the CS) sets out the strategic borough-wide target of 50% of new housing from all sources to be affordable. The Council considers that the shortfall below 50% is therefore significant, and would fail to make the appropriate contribution to meeting the demand identified in the Council's Strategic Housing Market Assessment 2016 (SHMA) of 2, 132 houses per year, of which 695 (33%) should be affordable.
10. The Council has indicated that a contribution of £1,200,000 would be justified, although no financial appraisal has been submitted in relation to this figure.
11. Paragraph 173 of the National Planning Policy Framework (the Framework), advises that pursuing sustainable development requires careful attention to viability and costs in plan making and decision taking. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing should, when taking account of the normal costs of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable. An assumed profit of 20% on gross development value was considered reasonable by both parties, and I see no reason to doubt this conclusion.

12. Policy 3.71 of the London Plan makes it clear that the viability of schemes must be taken into account when assessing affordable housing contributions, in order to enable developments to be deliverable. Policy SP8 of the CS also acknowledges that regard should be had to the economics of providing affordable housing. As an assessment of viability has been carried out, and a contribution identified which the appellant and the Council's consultants consider to be realistic and viable, the payment of this sum would not therefore conflict with these policy requirements or with the requirements of the Framework.
13. The Council has acknowledged that its objectively assessed housing need is far in excess of its identified source of housing capacity, and that it must maximise every opportunity to close this gap and ensure the appropriate level of affordable housing is provided. The provision of £495,000 would enable some contribution towards affordable housing within the borough, and as it has been established through the viability assessments that this is the appropriate level given the circumstances of the appeal scheme, I conclude therefore that a contribution of this amount would make adequate provision for social housing.
14. The policy requirements of Policy 3.9 of the London Plan, which seeks balanced communities, and of Policies 3.11 and 3.12 of the London Plan 2015 in respect of achieving the maximum reasonable amount of affordable housing, having regard to the need to encourage rather than restrain residential development and the specific circumstances of individual sites would be met. The proposal would also accord with Policy SP8 of the CS in seeking an element of affordable housing from a development capable of accommodating 10 or more dwellings.
15. I have considered the detailed evidence of the Valley Lodge Residents' Association, which highlights the the possibility for variations in assessment of potential profit, but in the light of the evidence provided by both viability appraisals of the site, conclude that the agreed figure is a reasonable one.
16. I have considered the judgement of the Appeal Court which has been put before me¹ which found that it was lawful for an Inspector to determine that the policy encouragement for the delivery of housing could overcome policy stipulations for the delivery of affordable housing. In the light of the Council's difficulties in meeting its housing need, I conclude therefore that the benefits of adding to the market housing stock of the borough in what is agreed by the parties to be a sustainable location would not be outweighed by the harm to achieving sustainable communities by reason of the shortfall in affordable housing below the 50% target.

S106 Planning Obligation

17. I have considered the UU provided in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010.
18. The Council had sought that any planning obligation should contain a mechanism for review of affordable housing delivery, should any delay in implementation of the scheme lead to a higher than expected development value. The appellant was willing to do this, and it is cited in the appellant's statement as being a factor that should weigh strongly in favour of the appeal proposal. However, the UU does not include an Affordable Housing Review

¹ Between Vannes KFT and Royal Borough of Kensington and Chelsea [2010] EWCA Civ 1466

Mechanism. The appellant is now of the opinion that such a mechanism is not necessary, as development will take place immediately on any grant of permission.

19. While it is not clear to me that an immediate start could be guaranteed, the London Plan Housing Supplementary Planning Guidance suggests that the use of review mechanisms to maximise affordable housing output are appropriate where schemes have long build-out times, and/or where there are significant changes in costs or values. The appeal proposal would involve development on the roofs of existing, inhabited blocks, and so would be likely to be complex, but the proposed development is relatively small in scale and not likely therefore to have an extended build-out time. Although the the Valley Lodge Residents' Association has highlighted the general upward trend in house prices in the area, I do not consider that this would be likely to give rise to a sufficiently sharp fluctuation in costs or values related to the scheme to require such a mechanism. I conclude therefore that a review mechanism would not be necessary.
20. Existing leaseholders are concerned that the Deed may be enforceable against them unless specified otherwise, but as they are not parties to the Deed, this would not be the case.
21. The paragraphs above set out the clear policy requirements for affordable housing provision either on-site or by means of a financial contribution and a discussion of the appropriate sum to be provided by such an agreement. In the light of my conclusions on these matters, it appears to me that a planning obligation covenanting an appropriate sum would be necessary to make the development acceptable in planning terms and directly related to the development, and that the sum offered is fairly and reasonably related in scale and kind to the development. I consider therefore that the obligation passes the statutory tests.

Other Matters

22. There were a large number of representations from local residents of the estate expressing concern at the appeal proposal. The following paragraphs address the main concerns that were raised.
23. The low key design of the proposed roof extensions would limit their effect on the appearance of the estate, while details of materials are an issue which could be reserved by condition. Due to intervening houses and planting there are no clear lines of site between the estate and The Eagle public house or the Snaresbrook Conservation Area and I conclude that the proposal would not have a harmful effect on the setting of these designated heritage assets.
24. While the proposed roof additions would effectively roof over the balconies of dwellings on the top floor, the loss of light that this would cause would be limited. It is not clear to me that the provision of a roof storey, set back from the edge of the roof would increase levels of overlooking significantly above that already possible between blocks in most parts of the estate. However, at the one point where the potential for overlooking has been identified, from block F over Nos 73 and 74 Malcolm Way, it will be possible to reduce harm by way of a condition.

25. The need for adequate sound insulation is important for existing residents, and is a matter to be dealt with through the building regulations. Building regulations would also address the structural effects of the development on the existing blocks and other issues including any potential disturbance of asbestos and the effects on gas flue venting and water pressure.
26. The site is located in an area of good public transport accessibility, and I see no reason to doubt the evidence put forward by the Council and the appellant to suggest that the proposal would not give rise to unacceptable levels of parking congestion.
27. Existing access arrangements appear capable of accommodating emergency vehicle access, and I can see no reason to believe that this would change with the appeal development.
28. Noise and disturbance during construction would be temporary, and would be capable of being controlled by a Construction Method Statement, secured by condition.
29. Waste and recycling facilities and cycle parking would be located on existing open spaces, but would be peripheral to them. In any event, their location and appearance would be capable of being managed by condition.
30. As the proposed development would be at roof level, it would not be likely to have a harmful effect on wildlife making use of the site, or on the root systems of protected trees within the site, while the risk of damage to trees during construction work is capable of being managed by condition.
31. The proposed development would be liable for a CIL payment, which would be put by the Council towards investment in local infrastructure and services in order to offset additional demand created by the development.
32. No compelling evidence has been put before me to demonstrate that the proposed development would put a strain on existing arrangements for surface water drainage or the disposal of sewerage. Some mitigation of rainwater run-off would be achieved by the presence of green roofs. A sustainable approach to surface water drainage can be secured by condition.
33. Provision for disabled residents would be constrained by the existing access arrangements to the blocks. However, it would be open to me to require details of how two of the flats will be made wheelchair-accessible, which I have done by condition.
34. Matters relating to any potential breach of covenant with existing lessees of the blocks, any potential additional burden in terms of maintenance charges, or the effect on property prices are not matters to be determined through the planning system.

Conditions

35. I have had regard to the conditions put forward by the Council, on which the appellant has had an opportunity to comment. In addition to the standard time condition I impose, in the interests of certainty, a condition requiring implementation of the development in compliance with the approved plans.
36. To ensure that the dwellings are capable of providing adaptable and accessible accommodation, a condition is imposed requiring compliance with the relevant

optional requirement of the Building Regulations. I have also conditioned details in relation to the two wheelchair-accessible dwellings in order to ensure the development provides homes capable of meeting the diverse and changing needs of future occupiers.

37. Details of cycle storage facilities are required by condition in order to support the use of sustainable travel options. Details of refuse storage facilities are sought by condition in order to protect the character and appearance of the area and the living conditions of its occupiers. Details of facing materials are also required by condition. As the development will occur on top of the existing buildings, there will be little in the way of site clearance or demolition to occur, and as this is a matter which will be important in protecting the character and appearance of the area, it is required that these details are submitted prior to the commencement of development.
38. A Construction Method Statement is required by condition and the hours of work in pursuance of the development are restricted by condition, in order to protect the occupiers of adjoining dwellings from noise, disturbance and dirt or dust.
39. Conditions are imposed in relation to the standards of energy performance and water efficiency to be achieved through the development, in the interests of achieving a good standard of performance and to support the objective of sustainable development. A condition requiring details of surface water drainage is applied, in the interests of protecting occupiers of the area from the risk of flood.
40. New external lighting to roof terraces and cycling, refuse and recycling facilities would be prominent within the estate. Details of external lighting are therefore required by condition to ensure that the appearance of the area is protected.
41. An arboricultural method statement is required in respect of the protection of trees on site, in order to ensure that the character and appearance of the area is protected.
42. Details of the works to screen views from new dwellings in Block F towards existing dwellings in the site are reserved by condition in order to protect the living conditions of neighbouring occupiers. Similarly, a condition requiring obscured glazing in flats 16 and 17 in Block E is added in order to protect the living conditions of neighbouring occupiers.
43. No compelling evidence has been put before me to suggest the likelihood of protected species, including bats, being present on the host buildings, and I have not, therefore, added a condition requiring an ecological survey.

Conclusion

44. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

S J Buckingham

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 981.10 – 01; 981.10 – 02; 981.10 – 03; 981.10 – 04; 981.10 – 05; 981.10 – 06; 981.1 – 100; 981.10 – 101 (Proposed Block A, B & C); 981.10 – 101 (Proposed Block D & E); 981.10 – 103; 981.10 – 104; 981.10 – 105 Rev. 1; 981.1 – 113; 981.1 – 116; 981.1 – 117; 981.10 – 114; 981.10 – 115 A; 981.10 – 115B; 981.10 – 115C; 981.10 – 117; 981.10 – 118.
- 3) The dwellings, with the exception of those two units to be constructed in accordance with condition 4 below, shall not be occupied until the Building Regulations Optional Requirement M4(2) Category 2: Accessible and adaptable dwelling has been complied with, and the details of compliance provided to the local planning authority.
- 4) No development shall take place until a scheme indicating the provision to be made for two wheelchair-accessible dwellings shall have been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented before the relevant dwellings are occupied and they shall be retained in that form thereafter.
- 5) The dwellings hereby permitted shall not be occupied until details of the design and location of the cycle storage facilities have been submitted to and approved in writing by the local planning authority. The facilities shall be provided as approved prior to the first occupation of the development hereby permitted, and shall be retained thereafter in accordance with the approved drawings.
- 6) The dwellings hereby permitted shall not be occupied until details of the refuse storage and recycling facilities have been submitted to and approved in writing by the local planning authority. The facilities shall be provided as approved prior to the first occupation of the development hereby permitted, and shall be retained thereafter in accordance with the approved drawings.
- 7) No development shall commence until details or samples of the materials to be used in the construction of the external surfaces of the extensions hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details or samples.
- 8) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) Routes for construction traffic;
 - ii) wheel washing facilities;
 - iii) measures to control the emission of dust and dirt during construction;
 - iv) measures to control noise during construction; and
 - v) a scheme for recycling/disposing of waste resulting from demolition and construction works.

- The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 9) Construction works shall take place only between 08:00 and 18:00 on Mondays to Fridays, and between 08:00 and 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
 - 10) The dwellings shall not be occupied until the relevant requirements of level of energy performance equivalent to ENE1 level 4 of the Code for Sustainable Homes have been met and the details of compliance provided to the local planning authority.
 - 11) The dwellings shall not be occupied until the Building Regulations Optional requirement Approved Document G2 – Water efficiency (2015 edition) has been complied with and details of compliance provided to the local planning authority.
 - 12) No dwelling hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to DEFRA's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
 - 13) Details of any permanent external lighting shall be submitted to and approved in writing by the local planning authority before the dwellings are occupied. Development shall be carried out in accordance with the approved details.
 - 14) No works of development shall take place until an arboricultural method statement, including a tree protection scheme in accordance with BS 5837, for all trees located within the perimeter of the application site shall have been submitted to and approved in writing by the local planning authority. The protection measures as approved shall be undertaken at the site before any work in connection with the development commences at the site, and shall be retained for the entire period of the duration of the works hereby permitted. The scheme shall be implemented as approved.

- 15) The flats within Block F shall not be occupied until details of measures for screening views from the fourth floor terrace and roof terrace serving the proposed flats at Block F towards Nos. 73 and 74 Malcolm Way have been submitted to and approved in writing by the local planning authority. Development shall be carried out and retained thereafter in accordance with the approved details.
- 16) The flats at nos. 16 and 17 at Block E shall not be occupied until the north facing windows serving the living/dining/kitchen areas have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter.