
Appeal Decision

Site visit made on 13 December, 2016

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: 21st April, 2017

Appeal Ref: APP/B5480/W/16/3157438

127 Wennington Road, Rainham, Havering, RM13 9TR

- 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 R Budden against the decision of the Council of the London Borough of Havering.
 - The application Ref: P0008.16 dated 5 January, 2016 was refused by notice dated 8 July, 2016.
 - The development proposed is described as single storey rear extension to existing unit creating a one-bedroom apartment (1b 1p) studio with associated amenity.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the proposal would provide adequate living conditions for future occupiers with respect to outdoor amenity space, noise and disturbance and outlook, and whether it makes adequate provision towards education in the borough.

Reasons

Outdoor amenity space, noise and disturbance and outlook

3. The appeal proposal is for the subdivision of the present plot to allow for the creation of a self-contained, single storey, one bed dwelling in an extension attached to the rear of the existing ground floor shop unit.
 4. The appeal development would be inserted into the former rear garden or yard area of no. 127 Wennington Road, and would occupy the majority of that area. There would be sufficient space for the provision of one parking space and a cycle space. There would be a long narrow strip to the front of the dwelling separating it from the boundary with Ferro Road and providing space to store and move recycling and waste bins. While the strip of space would have an area of 7 m² its use for purposes such as sitting out or drying would be impractical.
 5. The appellant has indicated that the parking space to the side of the dwelling would be able to accommodate a chair and table. However this arrangement would be very restricted if the car were also present. The low level fences shown on the submitted drawing SP1563SK1 would mean that this space could
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- be overlooked from Ferro Road and the house to the rear. There would be as a result no usable private outdoor amenity space.
6. While the appellant has stated that the intention is to market the dwelling for the single young professional, no convincing evidence has been supplied to support the assertion that this type of person would not be expected to have any great need for outdoor space.
 7. The Council's Residential Design Supplementary Planning Document 2010 while not prescribing fixed standards for private outdoor amenity space, seeks to ensure that every new residential development should have access to suitable private or communal outdoor amenity space, including through the provision of areas as small as a balcony or patio. As the appeal proposal does not have sufficient space in its plot to provide a usable amount of private outdoor amenity space, it therefore conflicts with this document.
 8. The constraints of the site mean that the proposed development could provide windows only on the north and west elevations. The windows on the west elevation would look towards the boundary treatment between the appeal site and Ferro Road, which would be little different from the situations in dwellings facing the road across small front gardens elsewhere in the area. The windows in the north elevation would overlook the car parking space, which has some provision for landscaping and would not therefore create a particularly poor outlook. I conclude therefore that the proposal would not conflict with the Residential Design SPD which seeks at least one main window with an adequate outlook in new developments.
 9. The internal layout of the appeal dwelling would create a bedroom abutting the rear wall of the commercial unit fronting Wennington Road. However, the commercial unit is currently in use as a barbers, and most shop uses would be likely to be most active during the day, when any noise or disturbance would be less likely to be noticed.
 10. The appeal site adjoins a small commercial area, which includes a number of takeaways and contains accommodation over shops as well as houses and flats along Ferro Road to the rear. The habitable rooms of the appeal dwelling would be closer to the commercial frontage than those of houses in Ferro Road, and situated at ground level, unlike the upper floor accommodation on the frontage. Levels of noise or disturbance likely to be experienced by occupiers of the appeal dwelling would therefore be greater than that for other occupiers in the vicinity.
 11. On this count therefore, I conclude that the appeal dwelling would conflict with Policy DC61 of the Council's Core Strategy and Development Control Policies Development Plan Document 2008 (the CS) where it seeks to protect the living conditions of occupiers in respect of noise impact.

Whether the proposal makes adequate provision towards education in the borough

12. Policy DC72 of the CS seeks to secure contributions towards infrastructure to mitigate the effects of development. It includes provision for primary and secondary education facilities in relation to Policy DC29 of the CS. Paragraph 203 of the Framework indicates that planning obligations may be sought in order to mitigate the impact of new development, provided the tests set out in paragraph 204 are met, which are the tests set out in Regulation 122 of the

Community Infrastructure Levy Regulations 2010 (the CIL Regulations). No completed Unilateral Undertaking in respect of such a contribution has been put before me.

13. However, Policies DC72 and DC79 of the CS pre-date the National Planning Policy Framework (the Framework) and must be considered in the light of government policy as expressed in the Written Ministerial Statement dated 28 November, 2014 (the WMS), to be read alongside the Framework. The WMS defines specific circumstances where tariff-style planning obligations should not be sought. This is supported by guidance in the Planning Practice Guidance, PPG, revised following a Court of Appeal judgement concerning the WMS 11 May, 2016¹, which itself overturned a previous Court judgement, dated 31 July, 2015².
14. The WMS sets out that for sites of 10 units or less, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought. It is clear therefore that Government does not wish such contributions to be sought from developments of 10 units or less.
15. The Council also refers to its Planning Obligations Supplementary Planning Document 2013 (the SPD) which sets out its approach to planning obligations, and acknowledge that the approach based on pooling such contributions is now out of date. I concur and conclude also that Policies DC72 and DC29 are inconsistent with national policy as set out in the Framework and the WMS.
16. Nonetheless, the Council has also directed me towards the evidence contained in Technical Appendix 1 of the SPD, which sets out a methodology for calculating a full standard charge, and in Technical Appendix 2 which contains the approach to testing financial viability as part of the Council's planning obligations strategy. Although contributions for other forms of infrastructure are now funded through CIL payments, S106 obligations in this borough are still used to obtain contributions for education. The Council argues that this does not represent a tariff-style contribution as it is not based on a fixed list of charges but on the financial impact of the residential proposal.
17. To this end the Council's "Commissioning Plan for Education Provision 2015/16 – 2019/20" 2015 confirms the shortage of school places in most parts of the borough and the lack of capacity in existing educational provision to accommodate demand for additional school places generated by new development. Although the Council has calculated that the cost of mitigating this development in respect of all educational provision would be £8,672, a discounted figure of £6,000 is sought.
18. The PPG defines a tariff-style contribution³ as being where an authority seeks planning contributions to pooled funding 'pots' intended to provide common types of infrastructure for the wider area. On the basis of the evidence before me, the Council are not intending to identify a specific project for the requested contribution, but would allocate it, when received, together with a maximum of four other contributions to a specific project at a later date.

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.

² West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government CO/76/2015 [2015] EWHC 2222 (Admin)

³ Paragraph 014 Ref ID:23b-014-20160519

19. There are therefore two matters here: is the Council's approach to seeking such contributions contrary to national policy, as set out in the WMS, acceptable; and does the Council's approach involve pooled, tariff-style contributions that can be secured in accordance with the CIL regulations?
20. In terms of the first question, the proposal clearly falls considerably below the threshold set in the WMS. Therefore, while I accept that Policies DC72 and DC29 do seek contributions to education facilities, this is contrary to national policy on this matter. In absence of convincing evidence that there would be no impact on the viability of this small-scale proposal or indeed that such contributions would not place a disproportionate burden on small-scale developers in the area, or that the education needs of the Borough would not be met by appropriate obligations associated with large-scale schemes, the WMS remains a material consideration of significant weight. In this case, I am satisfied that it is sufficient to set aside the conflict with the relevant policies in this instance.
21. On the second point, even were it acceptable to seek such a contribution, that the Council are now seeking an obligation which relates solely to education infrastructure does not, to my mind, take it out of being a tariff-style payment. It is clearly intended to be pooled with other payments, and in absence of an identified project at the time of the submission of any obligation, I am not satisfied that this approach, nor one, as suggested by the Council, where agreement is reached with the appellant as to a range of possible schools where such a contribution could be spent, accords with CIL Regulation 122(2).
22. Furthermore, CIL Regulation 123(3) sets out that a maximum of five obligations may be sought for a specific infrastructure project or a particular type of infrastructure. I am not satisfied that a deferred approach to unidentified projects, whether overseen by the Council or not, accords with the regulations. Such an obligation if made could not therefore represent a reason for the grant of planning permission.
23. I note that the Council has supplied a number of appeal decisions⁴ in which the Inspectors have concluded that the approach of Policy DC29, combined with the Council's monitoring arrangements in relation to payments, would not engage the provision of Regulation 123 of the CIL regulations. I note that a further decision⁵ addresses a scheme in excess of the WMS threshold.
24. I have had regard to those decisions that post-date the Court of Appeal finding on the WMS, but cannot be sure of the evidence presented to the Inspectors in those cases. I have considered this case on the evidence presented to me; in any case each application or appeal must be considered on its own merits.

Conclusion

25. Notwithstanding my findings in respect of outlook and provision for education, I have found that the development would provide harmful living conditions for future occupiers in respect of outdoor amenity space and levels of noise and disturbance. The proposal would make a contribution towards the supply of housing, but this would be a very small one. The benefits of the scheme would therefore be minor, and would not outweigh the harm I have identified.

⁴ APP/B5480/W/15/3140418; APP/B5480/W/16/3152013; APP/B5480/W/3153735.

⁵ APP/B5480/W/16/3153011

26. For these reasons therefore, and taking into account all matters raised, I conclude that the appeal should be dismissed.

S J Buckingham

INSPECTOR