
Appeal Decision

Site visit made on 21 March 2017

by Philip Lewis BA (Hons) MA MRTPI

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

Decision date: 24 April 2017

Appeal Ref: APP/B5480/W/17/3166972

292 Elm Park Avenue, Hornchurch RM12 4PQ

- 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 Les Jackman against the decision of the Council of the London Borough of Havering.
 - The application Ref P1511.16, dated 14 September 2016, was refused by notice dated 28 November 2016.
 - The development proposed is described as 'proposed conversion of existing dwelling into 1 x 2 bed flat and 1 x 1 bed flat with dual entrance. Single storey rear extension at 4.0m'.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appellant has provided with the appeal an amended plan¹ which relates to a revised car parking arrangement, which it has been stated was provided to the Council before it determined the planning application. I wrote to the Council to ask them if they had considered the application on the basis of the amended plan and they confirmed that they had not received the amended plan prior to determining the planning application.
3. I have had regards to the amended plan in the light of the Wheatcroft judgement² which supports the consideration at appeal of a revised scheme which is substantially the same as that originally proposed. However, it is necessary to ensure that those who should have been consulted on the changed development are not deprived of an opportunity of consultation. In this case, the amended scheme re-orientates the proposed parking spaces and provides for a wider vehicle crossing. I understand from the Councils evidence that the Highways Authority had considered the possibility of the provision of 5 perpendicular parking spaces in addition to the proposed arrangement but felt that a street tree to the front of the property precluded such an arrangement. Given that the changes relate only to the re-orientation of the proposed parking spaces within the same area identified for parking and the comments of the Highway Authority above, I do not consider that my consideration of the appeal scheme on the basis of the amended plan would give rise to prejudice to the interests of interested persons.

¹ SP1637sk11 dated 23 November 2016

² Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

Main Issues

4. The main issues for the appeal are:

- Whether future occupiers would be likely to experience acceptable living conditions in terms of internal space;
- If necessary, whether the proposal makes appropriate provision for infrastructure, with particular regard to school places; and
- Highway safety and residential amenity resulting from any additional on-street car parking.

Reasons

Living conditions - Internal space standards

5. The appeal proposal would give rise to two units of accommodation, one with one bedroom with a floor area of about 41 metres square and the other with two bedrooms, with a floor area of about 52 metres square. The Nationally Described Space Standards (NDSS) have been adopted into the London Plan 2016, and set out that the minimum gross internal floor area for a 1 person 1 bedroom unit is 39 square metres for a property with a bathroom and 50 square metres for a 1 bedroom 2 person unit. The minimum gross internal floor area for a 2 bedroom 3 person unit is 61 square metres.
6. The two bedroom unit at 52 square metres is significantly below the minimum standard of 61 square metres for a 2 bedroom 3 person unit as set out in the NDSS. I have had regard to the appellant's comments concerning the sizes of the bedroom, bathroom and lounge/kitchen/diner and garden and that it is corridor space which is deficient. However, I consider that the appeal proposal through giving rise to a unit significantly below the minimum space standard would nevertheless give rise to inadequate accommodation in terms of internal space for future occupiers.
7. The parties agree that the one bedroom unit meets the NDSS for a 1 bedroom 1 person unit. However whilst the proposal is described as being a one person unit, I note that the proposed bedroom is shown on the submitted plans as having 11.5 square metres floor area, with the plans indicating it able to accommodate a double bed. It could therefore be considered as being capable of accommodating two bed spaces based on the minimum figure for a double room set out in the NDSS of 11.5 metres square. Consequently, if so occupied, the one bedroom unit would not meet NDSS floorspace requirements for a 2 person unit.
8. I have had regard to the appellant's comments concerning different positioning and sizes of rooms within the proposal and whether this matter could be dealt with by a planning condition. However, the proposal would then be substantially different to that before me and may not accord with the description of development as set out in the appeal proposal. Furthermore, such a condition is unlikely to pass the test of precision for planning conditions as set out paragraph 206 of the National Planning Policy Framework (the Framework).
9. Therefore, future occupiers of the proposed development would not be likely to experience acceptable living conditions in terms of internal space. The appeal

proposal conflicts with London Plan 2016 Policy 3.5 which amongst other things includes that housing developments should be of the highest quality internally and the London Borough of Havering Core Strategy and Development Control Policies Development Plan Document 2008 (DPD) Policy DC61 which includes that development must meet the needs of all people of all ages. The appeal proposal also does not meet the requirements of the NDSS or the Mayor of London Housing Supplementary Planning Guidance 2016.

Infrastructure – School Place Provision

10. DPD Policy DC72 seeks to ensure that new development provides for sustainable development through securing contributions towards infrastructure where the appropriate tests are met. Policy 8.2 of the London Plan includes amongst other things that development proposals should address strategic as well as local priorities in planning obligations. DPD Policy DC29 is concerned with the provision of primary and secondary education facilities including by seeking payments from residential developers for the capital infrastructure of schools required to meet the demands generated by the development.
11. Whilst the DPD Policies predate the Framework, they remain broadly consistent with paragraph 203 which states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 204 of the Framework states that where planning obligations are sought, they must meet all of the three tests. The three tests are also set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) require that planning obligations should be necessary to make the development acceptable in planning terms; directly relates to the development; and be fairly and reasonably related in scale and kind to the development.
12. The Council has stated that its Planning Obligations SPD 2013 (SPD) is out of date in terms of the pooling of contributions due to Regulation 123 of the CIL Regulations. However, the evidence as set out in the supporting technical reports to the SPD demonstrates a need for school places across the borough and I note that there is no spare capacity to accommodate demand for primary and early year's school places generated by new development. The Council is seeking a contribution of £6000 per net dwelling, a figure derived from the SPD which includes 3% of the total sought to be to monitor the obligations to ensure that no more than five contributions would be pooled for individual projects. Whilst no specific project has been identified by the Council which is directly related to the development, it is clear from the evidence that the monies would be targeted at providing additional school places, which are not allocated on a geographical or a catchment basis. The Council has cited several appeal decisions³ to which I have had regard.
13. The parties do not dispute that the proposed development would give rise to a need for additional educational provision. I am satisfied that the contribution sought by the Council would meet the three tests set out in paragraph 204 of the Framework and Regulation 122 of CIL.
14. The appellant has stated that he is willing to enter into a planning agreement in this regard but the opportunity to do so was not offered during the planning application process. No such planning obligation has been provided and it

³ APP/B5480/W/16/3157634; APP/B5480/W/16/3160652; APP/B5480/W/16/3152013; APP/B5480/W/16/3153735

would not be appropriate to seek to secure an obligation via condition given the guidance in the Planning Practice Guidance⁴ and therefore in its absence, despite the appellant's willingness, on this issue the proposal would be unacceptable. I conclude that the proposal would fail to make adequate provision towards education in the area. Consequently, the proposal would conflict with Policies DC29 and DC72 of the DPD and Policy 8.2 of the London Plan.

Highway safety

15. The Council note in their officers report that there appears to be pressure on street parking in the area, with restrictions from double yellow lines, vehicle crossovers and areas of marked pavement parking. This accords broadly with what I saw during my site visit, where I observed the double yellow lines and marked pavement parking space to the front of the property. Although the appeal site is reasonably close to Elm Park Station, the area is considered to have a poor PTAL rating.
16. The Highway Authority requires that 5 parking spaces are provided to serve the appeal scheme. I note that the property has parking currently for up to 5 vehicles, and that the appeal scheme includes the provision of 5 car parking spaces within the wide site frontage, with the loss of a pavement parking space, the loss of which has not been disputed. Given the width of the site frontage I consider that the proposed 5 parking spaces could be provided perpendicularly to the highway via a wider footway crossing as per the amended plan without compromising the large street tree on the street corner. If I were minded to allow the appeal, the details of this could be dealt with by way of a planning condition.
17. To conclude on this matter, I consider that the appeal scheme would not give rise to unacceptable harm to highway safety and residential amenity resulting from additional on-street car parking and therefore does not conflict with DPD Policy DC33 which includes amongst other things that car parking provision within new developments should not exceed the maxima set out in the London Plan. This does not outweigh however my findings in respect of the other main issues.

Other matters

18. I have had regard to the comments concerning housing need in the area and that there have been no objections from neighbours. However, these matters do not lead me to a different conclusion.

Conclusion

19. For the above reasons and having considered all matters raised, I conclude that the appeal should be dismissed.

Philip Lewis

INSPECTOR

⁴ PPG Paragraph: 010 Reference ID: 21a-010-20140306