The Planning Inspectorate

Appeal Decision

Site visit made on 27 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/16/3166324
Land adjacent 330 Abbs Cross Lane, Hornchurch, Essex

- 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 Wennington Property Development Ltd against the decision of the Council of the London Borough of Havering.
- The application Ref P1870.15, dated 14 December 2015, was refused by notice dated 19 October 2016.
- The development proposed is described as 're-development of land adjacent to 330 Abbs Cross Lane, Hornchurch to build 3 detached houses, landscaping of site to form new vehicle access, parking and amenity space'.

Decision

1. The appeal is dismissed.

Procedural matter

2. I have used the site address as set out in the appeal form as it is more complete than that given in the application.

Main Issues

3. The main issues for the appeal are:

   - The effect of the proposed access on highway safety in Abbs Cross Lane; and
   - Whether the proposal makes appropriate provision for infrastructure, with particular regard to school places.

Reasons

Highway safety

4. The appeal site is situated between 330 Abbs Cross Lane to the north and a railway to the south and consists of an area of vacant land which tapers in width from the rear towards the road frontage. Abbs Cross Lane adjacent to the appeal site is on a slight curve and rises to the south to a bridge over the railway which physically limits visibility from the appeal site to the south along the road, with the appeal site being below the level of the road. I understand the road to be a local distributor road with a speed limit of 30 mph.

5. It is proposed that a new site access to serve three dwellings is formed for the appeal site, situated towards the boundary with No 330. The plans indicate that the access would have a width of about 5.2 metres and a 5 metre deep

plateau with a gradient of up to 1:40 for vehicles to stop at the site exit. A 40 metre line of sight would be provided to the crest of the hill on the bridge. The Manual for Streets[1] (MFS) sets out that the stopping sight distance (SSD), the distance driver need to be able to see ahead and stop from a given speed for 30 mph is 40 metres. However, for existing streets the MFS states that 85th percentile wet weather speed is to be used for this and the evidence before me is that the 85th percentile speed of traffic has been measured on Abbs Cross Lane at 37mph and 38 mph for north and south directions. Consequently, whilst some traffic speeds may be considerably higher than the speed limit which applies to the road, the derived SSD as set out in the MFS is 56 metres for a 37 mph speed.

6. The appeal proposal with a 40 metre SSD falls considerably what is required in terms of highway safety given the 85th percentile speed and the appellant has put forward a traffic calming scheme to implement a 20mph zone extended from the south side of the railway bridge and along the carriageway up to 20 metres past the vehicle entrance to the site of Abbs Cross School. It is said that this would reduce the SSD requirement to 20 metres. The Highway Authority has no objection to the appeal scheme provided that a financial contribution is made towards traffic calming measures to bring down speeds to the prevailing 30 mph speed limit. The appellant has stated that a sum of money given to be used for a traffic calming scheme would be provided by way of a S106 planning obligation or a Unilateral Undertaking.

7. However, whilst I have had regard to the potential benefits of such a highways scheme in terms of wider highway safety, no such planning obligation under Section 106 of the Town and Country Planning Act 1990 has been provided for me to consider against the tests set out in paragraph 204 the National Planning Policy Framework (the Framework). Consequently, there is no secured means to provide safe access in terms of visibility for the appeal site.

8. I have considered whether this matter could be dealt with by way of a planning condition. The Planning Practice Guidance[2] (PPG) states that no payment of money or other consideration can be positively required when granting planning permission and that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation. In addition the PPG states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases, but may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. In this case, the appeal proposal is not of strategic importance and it has not been demonstrated that there are exceptional circumstances for the use of a planning condition to secure the required highway safety measures. Given the particular circumstances of the case, I do not consider that it would be appropriate to deal with this matter by way of such a planning condition.

9. To conclude on this matter, the appeal proposal would give rise to significant harm to highway safety in Abbs Cross Lane due to the inadequate sight stopping distance from the site access. It conflicts therefore with London Borough of Havering Core Strategy and Development Control Policies

[1] Communities and Local Government, Department for Transport Manual for Streets 2007
[2] 005 Reference ID: 21a-005-20140306010 and Reference ID: 21a-010-20140306

Development Plan Document 2008 (DPD) Policy DC32 which includes that new development which has an adverse impact on the functioning of the road hierarchy will not be allowed.

Infrastructure - School Places

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 decisions[3] to which I have had regard. 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.

13. The appellant has stated that they are willing to meet various obligation costs and charges. However, no such planning obligation has been provided and it would not be appropriate to seek to secure the obligation via condition given the guidance in the PPG 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.

[3] APP/B5480/W/16/3157634; APP/B5480/W/16/3160652.

Other matters

14. I have had regard to the physical condition of the appeal site and the appellant's intention to regenerate the site in a way sympathetic to the local character of the area. I have also had regard to the planning history and the previous appeal decision[4], and note that the appeal proposal had been developed from the previous scheme with a reduction in the number of units. I also note the appellant's comments regarding how they have worked with planning officers to achieve an acceptable scheme.

15. I have also taken into account the appellants comments that in the absence of the scheme being allowed that traffic would continue to exceed the speed limit on Abbs Cross Lane, the site would remain undeveloped and be unsightly and not contribute towards national and local housing need or brownfield land development targets. However, these matters do not outweigh the harm identified. The appellant's comments regarding the Council's handling of their proposals are matters for local government accountability.

Conclusion

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

Philip Lewis

INSPECTOR

[4] APP/B5480/W/14/3001599 dated 17 March 2015