
Appeal Decision

Site visit made on 3 April 2017

by Kenneth Stone BSc Hons DipTP MRTPI

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

Decision date: 2nd May 2017

Appeal Ref: APP/H5390/W/16/3166043
58-76 Willow Vale, London W12 0PB

- 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 Willow Vale Innovations Ltd against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2016/02506/FUL, dated 27 May 2016, was refused by notice dated 9 September 2016.
 - The development proposed is described as 'demolition of existing buildings and redevelopment of the site to provide five residential dwellings (Class C3) within a three storey terrace building and a two storey mews building, including associated landscaping, car and cycle parking'.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The description of development in the banner heading above is taken from the application form. The Council's decision notice contains an altered description which describes the development and nature of residential units in more detail, however, the original description is not incorrect and I have used it as that is what was applied for.
 3. The appellant included amended drawings as part of its appeal statement documentation in appeal enclosure 13. This amended the application plans to remove the first floor terraces associated with the mews buildings. The Council contended that this information was not provided with the appeal documents and that the scheme should be considered on the basis of the plans it considered at the time of the determination of the application. The plans were again provided in the appellants final comments. The plans removed the means of enclosure around the first floor terrace and removed the annotation that the flat roofed sections were to be used as terraces. The preclusion of these areas as terraces could be the subject of appropriately worded conditions to secure such and the alterations do not fundamentally change the proposals. On this basis I have had regard to the amended plans in my consideration of the scheme and I return to this matter further at the appropriate section of my decision below.
 4. The appellant has also provided a Flood Risk Assessment as part of its appeal documentation. I have had regard to this additional information in my determination of this appeal.
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Main Issues

5. The main issues in this appeal are the effect of the proposed development on:
- the availability of employment land in the borough;
 - the living conditions enjoyed by the occupants of the surrounding properties, in particular 65, 67, 69 and 71 Adelaide Grove and 48, 50 and 52A Willow Vale, with particular regard to outlook and noise and disturbance; and
 - flood risk in the locality.

Reasons

6. The appeal site comprises two workshop buildings, a hard standing area, a number of lock up garages and an area of land upon which lock up garages once stood (which have subsequently been demolished). The wider area is predominantly residential in character with housing and flatted development of varying ages and styles. There is a small development site adjacent which is nearing completion.

Employment land

7. The appellant has provided a marketing report and an updated report. Marketing has been on-going prior to the application and continued through during the appeal process. To date this has covered a period in excess of 14 months. The marketing report includes a condition survey which demonstrates that a significant financial investment would be required to bring the buildings to a reasonable standard and that this would be unviable given the low levels of rent that would be achievable for the units. The marketing particulars and reports further identify the constraints associated with the site, including its poor access, poor visibility and location imbedded within a primarily residential area.
8. This evidence is not challenged by alternative evidence from the Council. Whilst the marketing evidence is from only one source the justification provided by the appellant on the nature and reasoning for this is also not significantly challenged by the Council other than to contest that it conflicts with its guidance. In a more recent decision for the building to the front of this site the Council accepted this position and the marketing report. I note in the officer report in respect of that scheme that the Council assert that this is due to the fact that the application that it was supporting was for the smaller unit and only a limited number of the garages. However, this does not address the principle of why that changes the requirements and is an acceptable position. It is important for the Council to be consistent in its application of policy and guidance and this appears to be an area of inconsistency.
9. The garages to be lost are under a different lease and do not include employment activity. The circulation space around within the application site is required for all the buildings and it would be necessary to retain access for circulation for all of the units and garages the space is therefore not available to lease as part of an alternative arrangement to facilitate open storage which may otherwise restrict access to those garages or other units.
10. The on-going marketing exercise has demonstrated a lack of interest in the existing units; they have been vacant for some time or occupied at historically

low rents with the most recent occupier identifying that they would not continue with their lease.

11. In these circumstances I am satisfied that there is reasonable evidence to demonstrate that the workshop units are no longer required for employment purposes. That there is evidence of unsuccessful marketing and that the units or premises are not suitable for continued employment without significant investment to upgrade, and that such investment would be unviable. The proposals would therefore comply with policy LE1 of the Core Strategy, 2011 (CS) and policy DM B1 of the Development Management Local Plan, 2013 (DMLP).
12. The close proximity of the industrial units to residential properties adjoining and the comments from the appellant and neighbour responses on the application confirm issues with regard to revving engines and fumes from the previous uses. Whilst the Council have stated there has been no historical evidence of complaints regarding the site future uses in an uncontrolled industrial use in such close proximity to residential properties could be the source of noise and disturbance and nuisance and this adds to my conclusions regarding the appropriateness of the site for employment use.
13. For the reasons given above I conclude that the proposed development would not result in material harm to the availability of industrial land in the borough. Consequently the proposal would not conflict with policy LE 1 of the CS or DM B1 of the DMLP which seek to safeguard existing employment land or premises.

Living conditions

14. The appeal scheme proposes a building fronting Willow Vale and accommodating two flats. No objections are raised in relation to this building and I understand it is the subject of a more recent approval. I see no reason to differ from the Council in relation to its conclusions on this part of the scheme and conclude that it is acceptable.
15. The remainder of the development comprises a building to the rear of 54 and 56 Willow Vale which would accommodate three dwellings. The building would in effect fill the depth of the rear portion of the site from the rear boundary of the properties on Willow Vale to the rear boundaries of the properties fronting Adelaide Grove. The building would be single storey at the outer edges and slope up towards a central section that would provide for a first floor in all three properties, the two outer properties having less first floor floor-space.
16. The properties fronting Adelaide Grove are two storey terraced dwellings with very short rear gardens, in the region of 4m. This is below the 9m gardens identified in the Planning Guidance Supplementary Planning Document, July 2013 (SPD) Housing Policy 8 which therefore advises that a 45 degree line from a point at ground level on the boundary should be produced and if any element of the development extends above this line then on-site judgement will be the determining factor. The appellant, in part, suggest that given the additional length of garden to the side of the rear projection increases the depth of the garden the line should be taken from 2m above the adjoining garden level, also noting that the existing building has a wall in excess of the 2m point further affecting outlook.
17. In my view the proper application of the guidance would be the use of the 45 degree line from the ground level given the short garden. The rear projection

being a substantive part of the property and the 'side' garden element being a narrow strip of garden space. On this basis it is the on-site judgement that the guidance suggests that I must exercise.

18. The proposed building would result in a greater bulk and mass than the existing built form visible in these gardens. Whilst the design would include a sloping element away from the boundary this would still be readily visible and dominate the views from the garden and rear of these properties. The length of the flank elevation, steep pitch of the slope and overall height of this elevation would appear excessively intrusive and particularly enclosing for the occupants of 65, 67 and 69 Adelaide gardens.
19. I note that there is an existing building on site but with its much lower pitch and overall height this would not have the same dominating effect as the proposed development. I note also the suggestion of the appellant to reduce the height of the boundary wall from 2.4m and that the proposal would remove an existing two storey building in the corner of the site, which would improve the outlook of the occupants of the respective properties which look onto these elements. However whilst there would be some minor improvement to outlook from the reduction of the wall and a significant improvement from the two storey building this does not overcome the fact that the proposal would have a significant adverse effect on the outlook and enclosure of those properties affected by the position of the new building.
20. I also note the daylight and sunlight report and the compliance with the BRE indicators. However this does not address the effect on outlook sense of enclosure and the dominating and overwhelming effect that the proposed development would have given its close proximity to the property boundary and dimensions of the envelope of the mews building.
21. The appellant has acknowledged that the proposed terraces at first floor level on the mews building could give rise to noise and disturbance for occupiers of surrounding properties given their size and elevated position. This is a position I agree with. The appellant has provided amended plans to remove the terraces. The Council are concerned that they had not had the opportunity to view the plans and therefore requested that I consider the scheme on the basis of the plans it considered. I am of the view that had I been minded to allow the appeal the preclusion of the use of these areas as balconies could have been secured by way of a suitably worded condition and that the amended plans provided additional security to ensure there would have been no conflict with the approved plans. On this basis this is not a reason to dismiss the appeal, however for the avoidance of doubt a terrace/balcony at the upper level in the position originally shown would not be acceptable and would be likely to lead to noise and disturbance for the occupants of surrounding properties.
22. For the reasons given above I conclude that the proposed development would result in material harm to the living conditions enjoyed by the occupants of the surrounding properties, in particular 65, 67 and 69 Adelaide Grove, with particular regard to outlook. Consequently the proposal would conflict with policy DM G1 and DM A9 of the DMLP and Housing Policy 8 of the SPD which collectively seek to secure high quality development that, amongst other matters, protects existing residential amenities. This is consistent with the core planning principles set out at paragraph 17 of the National Planning Policy

Framework (the Framework) which include that planning should always seek a good standard of amenity for all existing occupants of land and buildings.

Flood risk

23. The appellant has provided a Flood Risk Assessment with the appeal documents that includes a sustainable drainage assessment. The Council's guidance in the SPD suggests that FRA are only required for larger sites in excess of 1 hectare, that is not the case here. The FRA notes the site is in flood zone 1 and that there is not risk from fluvial or river flooding. The site is outside the 1:100 year flood extent and the 1:1000 year flood extent.
24. The report further concludes that ground conditions are not suitable for infiltration and therefore in accordance with the Suds hierarchy run off would be managed via on site storage and drained to the local sewer network. The on-site storage would be provided in a permeable pavement sub base.
25. The report confirms a maintenance regime which is in accordance with the Council's guidance in the SPD. The Council do not challenge the findings of the report and provide no evidence to the contrary. It is suggested that a suitably worded condition be employed to secure the conclusions of the FRA should I be minded to allow the appeal. I am satisfied that such a condition could be imposed and that the findings of the report demonstrate that there would be no risk to occupiers of the development from flooding, that the development would not increase the risk of flooding elsewhere and that there are satisfactory proposals to deal with any run off water from the site.
26. For the reasons given above I conclude that the proposed development would not result in an increased flood risk in the locality. Consequently the proposal would not conflict with policy CC2 in the CS or policies DM H3 and DM A9 of the DMLP or paragraphs 99 to 104 of the Framework which collectively seek to ensure that development pays due regard to the risk of flooding including taking account of climate change.

Other matters

27. The proposal would result in the provision of 5 new homes which would assist the borough in meeting its and London's housing requirement. However, given the small number of units that the development would provide this only adds a minor positive weight to the planning balance.

Overall conclusions

28. The proposal would result in material harm to the living conditions of occupiers of surrounding properties and as such would conflict with the development. The minor positive weight attributed to the supply of housing would not outweigh this harm. My findings on the other main issues, that no harm would arise, do not add a positive weight to the scheme but are neutral factors. Overall, I therefore conclude that the proposal would not meet the environmental or social roles required to make it sustainable development.
29. For the reasons given above I conclude that the appeal should be dismissed.

Kenneth Stone

INSPECTOR