
Appeal Decision

Site visit made on 13 June 2017

by Siobhan Watson BA(Hons) MCD MRTPI

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

Decision date: 20 July 2017

Appeal Ref: APP/N1920/W/17/3171343

**Land to the rear of the Wellington Public House, Theobald Street,
Borehamwood, WD6 1AY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr A Landesberg (Belgravia Property Development (London) Ltd) against the decision of Hertsmere Borough Council.
 - The application Ref 16/1241/OUT, dated 22 June 2016, was refused by notice dated 12 September 2016.
 - The development proposed is the erection of a 3 storey block of 6 flats and rear parking.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The decision notice refers to policies of the Local Plan 2003 and the submission draft Site Allocation and Development Management Policies Plan 2015 (SADM). These documents were replaced by the adoption of the SADM on 23 November 2016. The appellant has been made aware of this policy change and, in any event, the relevant aims and objectives of the policies remain unchanged. Therefore, I find that there would be no prejudice from me basing my Decision on the adopted SADM.
3. The application was submitted in outline with all details, except for landscaping, submitted for consideration.

Main Issues

4. The main issues are (i) the effect of the proposed development upon the character and appearance of the area; and (ii) whether the provision of affordable housing should be required as part of the development.

Reasons

Character and Appearance

5. From Theobald Street, the proposed 3-storey block would be seen beyond the car park of the Wellington Pub and, given this substantial set back from the road, the building would not be obvious within the street-scene. Furthermore, there are large blocks of three-storey flats opposite the pub on Theobald Street. Given these factors, I consider that the proposal would not harm the character and appearance of Theobald Street.

6. The Wellington Pub is a locally listed building but given that it is already closely surrounded by buildings of a multitude of different sizes and designs, and because there would be a substantial physical separation between it and the proposed building, I do not consider that the block of flats would materially harm its setting.
7. However, Glenhaven Avenue, which the building would front onto, is particularly characterised by two storey terraced dwellings. The proposed flats would be extremely close to the terraced houses and the eaves of the proposed block would be a lot higher than those of the terrace. Therefore, the two buildings would look mismatched and out of proportion to each other. Furthermore, the side elevation and eaves of the proposed building would be seen protruding beyond the plane of the existing pitched roof. This would look unattractive. Overall, the resultant height, form and massing of the flats would be incongruous with the smaller terraced houses and would make the building appear overly dominant and incongruous within the street-scene. Furthermore, the proposed windows of the new building would be of a different size, shape and alignment to those of the terrace and this would further add to the incompatibility of the building within the Glenhaven Avenue street-scene.
8. I appreciate that there is a three-storey block of flats opposite the site on Glenhaven Avenue, but at least that block is only two-storeys high where it neighbours the adjacent terraced house. Notwithstanding this, the existence of that block does not provide justification for further harm. I also acknowledge that there are some flat roofed buildings in the industrial area at the end of the road but this area has a very different character to the residential part of the street. Furthermore, in contrast to the proposed appeal building, the existing flat roofed buildings are not side by side with the terraces.
9. The appellant has referred to a 2008 planning permission for a flat roofed three-storey development at 19 Glenhaven Avenue, which is also next to the appeal site. I note his argument that development has commenced and the permission is preserved in perpetuity, however, the flats have not been built and given that development has not significantly progressed in 9 years, it may be that they never will be built. Therefore, I have judged the proposal upon the current circumstances and context of the site and not what they might become at a future unknown date. Even if these flats do come to fruition, they would be further away from the terraced houses and therefore their relationship with them would be different to that of the appeal proposal.
10. For the above reasons, I conclude that the proposed development would harm the character and appearance of the street-scene. Consequently, I find conflict with Policies CS22 of the Hertsmere Core Strategy 2013 (CS) and Policies SADM3 and SADM30 of the SADM. In combination, these policies seek to ensure that development is of a scale and design which respects its immediate surroundings and ensures the creation of attractive places. I also find conflict with Paragraphs 17 and 56 of the National Planning Policy Framework (NPPF) which indicate that planning should always seek to ensure high quality design.

Affordable Housing

11. CS policy CS4 and the Hertsmere Affordable Housing Supplementary Planning Document, 2015 (SPD), indicate that developments of 5 dwellings or more in

the area should provide for 35% affordable housing. Because the proposal is for 6 flats, the Council say that 2 affordable units should be provided.

12. The Written Ministerial Statement (WMS) of 28 November 2014 states that tariff-style contributions such as that set by Policy CS4 and the SPD should not be sought from developments of 10 dwellings or less [sic]. The Planning Practice Guidance (PPG) was updated to reflect the WMS approach¹ following the judgment by the Court of Appeal on 11 May 2016² that the policy stance adopted by the WMS is lawful.
13. The publication of government policy, such as the WMS or the Planning Practice Guidance (PPG), has not altered the requirement of Section 38(6) of the Planning and Compulsory Purchase Act 2004. This is that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. That said, while the WMS and the amended PPG have not superseded the development plan, their policy stance post-dates the CS and is nevertheless a very important material consideration in any small scale housing proposal, including the current appeal, and one to which I attach very substantial weight.
14. The Council argues that the Hertsmere Strategic Housing Market Assessment, 2016, finds an acute need for Affordable Housing. The need is 434 affordable dwellings per year which, the Council says, is a 163% increase over a previous figure. The Council is of the opinion that these local circumstances justify the requirement for affordable housing provision on small sites. I have no reason to doubt the totality of this affordable housing requirement. However, I have no substantive evidence to persuade me that the situation in Hertsmere is so exceptional, that the Council should deviate from national planning policy advice.
15. The proposal would comply with the circumstances in the WMS and the PPG where contributions for affordable housing should not be sought. Therefore, whilst I acknowledge that the provision of a contribution towards affordable housing would accord with the development plan policies, significant weight must also be attached to Government policy as expressed in the WMS. As a consequence I consider that there is sufficient justification in order to remove the burden from small scale development that the proposed development should not provide a contribution to affordable housing as required by CS Policy 4 and the SPD.
16. I therefore conclude that affordable housing should not be required as part of the development.

Other Matters

17. The appellant argues that the site is in a sustainable location and is in a priority area for the delivery of housing. However, these matters do not outweigh the harm I have identified. I have taken into account all other matters, including representations from interested parties, but none outweigh the conclusions I have reached.

¹ Paragraph ID 23b-031-20161116

² Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

Conclusion

18. Whilst I find that, on the basis of the information before me, affordable housing should not be sought, this does not outweigh the harm I find to the character and appearance of the area, and the overall conflict with the development plan. Therefore I dismiss the appeal.

Siobhan Watson

INSPECTOR