
Appeal Decision

Site visit made on 26 June 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 27 July 2017

**Appeal Ref: APP/W5780/W/17/3170276
463 - 489 High Road, Ilford IG1 1TX**

- 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 S Majeed (City Sports) against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 2002/14, dated 11 June 2014, was refused by notice dated 30 January 2017.
 - The development proposed is erection of 4 storey building to provide 25 (10 x one bedroom, 15 x two bedroom) units with associated car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 4 storey building to provide 25 (10 x one bedroom, 15 x two bedroom) units with associated car parking and landscaping at 463 - 489 High Road, Ilford IG1 1TX in accordance with the terms of the application, Ref 2002/14, dated 11 June 2014, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr S Majeed (City Sports) against the decision of the Council of the London Borough of Redbridge. This application is the subject of a separate Decision.

Procedural Matters

3. A signed and completed S106 Unilateral Undertaking (UU) has been submitted by the appellant. It would secure contributions towards affordable housing provision and I return to this matter later.
4. For reasons of precision, I have amended the first part of the address of the appeal site from that which is provided on the application form, to reflect that set out in the Council's decision notice.

Main Issue

5. The main issue is whether the proposal makes adequate provision for affordable housing.

Reasons

6. The appeal relates to a proposal for a four storey building for 25 residential units with associated car parking and landscaping at Nos 463-489 High Road,
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Ilford. The site is currently occupied by a car sales area and associated structures which would be removed.

7. It is agreed between the parties that an off-site affordable housing contribution is acceptable in this case. The issue in dispute is the amount of contribution which should be provided. I note the contention by the appellant that the original decision minuted by the Council on 17th December 2015 did not state a S106 agreement had to be entered into in respect of affordable housing. However, the discussions and correspondence between the appellant and Council, the planning officer's report and the decision notice on the application make it clear that affordable housing was being sought in line with the local and national planning policies. It was therefore reasonable that the S106 agreement had to be entered into in respect of affordable housing on this development.
8. Paragraph 173 of the National Planning Policy Framework (the Framework) advises that to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. The level of developer's profit that would ensure a competitive return is not defined. The Planning Practice Guidance¹ (PPG) explains that this will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. It is stated that a rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible.
9. Strategic Policy 8 of the Council's Core Strategy 2008 (CS) states that the Council will negotiate to achieve an affordable housing provision of 50% across the range of housing on the site having regard to, amongst other things, the size of the site, the economics of providing affordable housing and the extent to which the provision of affordable housing would prejudice other planning objectives to be met from the development of the site. Policy 3.11 of the London Plan 2016 (LP) directs local planning authorities to set overall targets for affordable housing and Policy 3.12 of the LP provides guidance on negotiating affordable housing provision on individual sites.
10. Policy 3.12 of the London Plan states that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential schemes, having regard, amongst other matters, to the need to encourage rather than restrain residential development and the need to promote mixed and balanced communities. It is stated that negotiations on sites should take account of their individual circumstances including development viability, the implications of phased development and other scheme requirements.
11. The appeal scheme was first presented to the Council's Regulatory Committee in December 2015 when the affordable housing offer at that time comprised 36% of the total number of units or 9 affordable units. The appellant's viability assessment submitted at the time demonstrated that this was the maximum affordable housing that the scheme could viably accommodate. An updated viability appraisal was then submitted by the appellant in September 2016 during the course of completing the S106 agreement. It stated that the

¹ Paragraph: 015 Reference ID: 10-015-20140306

- scheme was unviable to provide any affordable housing due to the fact that the residual land value was below the benchmark land value by £545,083².
12. The appellant's viability report was then independently reviewed by BNP Paribas on behalf of the Council and concluded that based on their own assessment of the development, the appeal scheme would generate a surplus of £340,000³. At the time of Council's decision, the appellant had made a cash-in-lieu offer of £340,000 for affordable housing.
 13. The proposal would not achieve the overall borough-wide target of CS Strategic Policy 8, that 50% of all new housing from all sources is affordable. The Council contend that this would fail to reflect the identified significant and unmet need for affordable housing in the Council's Strategic Housing Market Assessment. However, in accordance with LP Policies 3.11 and 3.12, it has been demonstrated that the sum of £340,000 contained within the appellant's UU represents the maximum reasonable amount of affordable housing contribution arising from the appeal proposal. In doing so, the proposal would also accord with CS Strategic Policy 8 that states negotiations to achieve an affordable housing provision on housing development should, amongst other things, have regard to the economics of providing affordable housing on a site.
 14. As the significant need for affordable housing in the Borough is not in dispute between the main parties, the contribution based on the evidence before me would, in my view, accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL) and the tests for planning obligations set out in the Framework.
 15. The other main area of dispute between the parties in the UU is the Council's request for an affordable housing review mechanism. The PPG⁴ is clear in that viability assessment in decision-taking should be based on current costs and values and that planning applications should be considered in today's circumstances. However, it is stated that where a scheme requires phased delivery over the medium and longer term, changes in the value of development and changes in costs of delivery may be considered.
 16. Policy 3.12 of the LP states that negotiations on sites should take account of their individual circumstances including the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'). Contingent obligations are defined as the use of S106 agreements to enable and define mechanisms for the re-appraisal of viability prior to the implementation of schemes in whole or in part which are likely to take many years to implement.
 17. Therefore, although the LP supports re-appraisal of viability, this relates to schemes which are likely to take many years to implement. This is reinforced in paragraph 4.3.3 of the Mayor of London Housing Supplementary Planning Guidance March 2016. The appeal scheme however, would be developed in a single phase and as such would not amount to a long build out time. The PPG and the LP do not therefore advocate the use of such mechanisms in the case of the appeal proposal.

² Bespoke Property Consultants Development Viability Report September 2016

³ BNP Paribas Affordable Housing and Economic Viability Assessment December 2016

⁴ Paragraph: 017 Reference ID: 10-017-20140306

18. I therefore find that the review mechanism provided within the UU as suggested by the Council, is not necessary to make the development acceptable in planning terms. As such, it would not accord with the provisions of Regulation 122 of the CIL and the tests for planning obligations set out in the Framework. I have not therefore taken the review mechanism contained within the UU into account in reaching my decision.
19. I am satisfied that the proposed affordable housing contribution is necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with CIL Regulation 122. The signed and completed UU takes into account the comments from the Council (other than the review mechanism) in response to the appellant's Draft UU. I have therefore attached weight to the UU in reaching my decision.
20. Moreover, the Council recognises the need to achieve a good mix of housing and to address the chronic need for housing provision in the area. In this respect, the residential units (including 10% that would be wheelchair accessible) and the affordable housing contribution arising from the appeal proposal would contribute towards this target and the objectives of Policy 3.9 of the LP and paragraph 50 of the Framework, which seek to promote mixed and balanced communities. In doing so, the proposal would meet the social dimension of sustainable development.
21. An affordable housing contribution higher than £340,000 would render the scheme economically unviable and on this basis it is likely that neither identified benefits would be realised. This would be contrary to paragraph 173 of the Framework, which seeks to provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
22. Consequently, I conclude that the proposal would make adequate provision for affordable housing and as such would accord with CS Strategic Policy 8 and LP Policies 3.9, 3.11 and 3.12 and the aims of the Framework for the reasons set out above.

Other matters

23. I note the objections from local residents to the proposal. These include the impacts on the visual amenity, privacy, overlooking, light, overshadowing, parking, traffic, highway safety, drainage, local infrastructure, services and facilities and the amenities of local residents, particularly during the construction period. However, these matters did not form part of the Council's reasons for refusal and I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal and can be dealt with by planning conditions where appropriate.

Conditions

24. Having regard to the Framework, and in particular paragraph 206, I have considered the conditions suggested by the Council. In addition to the standard time limit condition, I have specified the approved plans as this provides certainty. Those conditions relating to the detailing of the external materials, boundary walls/fences and landscaping are necessary in order to safeguard the amenities and quality of life of the nearby and future residents and the character and appearance of the area.

25. Conditions relating to those dwellings identified as wheelchair housing are necessary to ensure the development provides satisfactory accommodation for people whose mobility is impaired. An external lighting scheme and external noise/sound insulation measures are necessary to safeguard the amenities and quality of life of the nearby and future residents. A condition relating to the designing out of crime is necessary to reduce the opportunities for criminal behaviour and contribute to a sense of security.
26. For the construction period, in order to mitigate the environmental impact of development works and to protect the amenities of local residents, the control of site working hours, submission of a Construction and Traffic Management scheme and a piling method statement would be necessary to establish the measures required. Details of sustainable drainage and surface water drainage arrangements would prevent flooding and pollution of the water environment.
27. A range of highway improvements are necessary to limit highway impact and to encourage and support sustainable transport options including car parking layout, car parking management plan, electric vehicle charging points and a transport improvements scheme in the vicinity of the site. Conditions relating to energy and water efficiency are necessary in order to ensure an energy efficient and sustainable development. A statement relating to carbon emission reduction measures is necessary in the interests of energy and resource efficiency.
28. The PPG advises that the pre-commencement conditions should only be applied in exceptional circumstances 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. I am not satisfied that clear evidence has been provided to justify the Council's suggested condition relating to the local car parking permit scheme exclusions for future residents in this case.
29. I consider all the conditions to be reasonable and necessary to the development of the site. I have reworded some of them for consistency and have reordered them for clarity. Some of the particular requirements involve work to be done before development can start on site or before dwellings can be occupied. These measures are so fundamental to the acceptability of the proposal that it would be otherwise necessary to refuse planning permission.

Conclusion

30. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be allowed.

David Troy

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 00002 Revision B; 00100 Revision C; 00101 Revision C; 00102 Revision C, 00103 Revision C; 00104 Revision C; 00105 Revision C; 00300 Revision B; 003021 Revision B; 00302 Revision B; 00303 Revision B; 00201 Revision B and DAPS.01, Daylight and Sunlight Assessment 1303 October 2013 Issue 1; Energy Statement and CSH Pre-Assessment 1303 October -13 Issue 1; Flood Risk Assessment Ref. 1876 November 2013; Noise Impact Statement October 2013 Ref. EPL 3160/R1; and Transport Statement October 2013.
- 3) Before the development hereby permitted commences at the site (other than demolition and site clearance), details/samples of the materials to be used in the construction of the external surface(s) of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with these approved details.
- 4) Before the development hereby permitted is first occupied, details of all walls and/or fences to be erected within or on the perimeters of the site shall be submitted to and approved in writing by the Local Planning Authority. The walls/fences as approved shall be erected at the site before the building(s)/use hereby permitted is first brought into use/commenced, and retained thereafter in accordance with the approved details.
- 5) Before first occupation, the dwellings (with the exception of the 2 (two) units constructed in accordance with condition 6 below) shall comply with Building Regulations Optional Requirement Approved Document M4(2) Category 2: Accessible and adaptable dwellings (2015 edition) and evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
- 6) Before the development hereby permitted commences at the site (other than demolition and site clearance), detailed plans to a scale of 1:50 shall be submitted to and approved in writing by the Local Planning Authority to identify the location, size and detailed layout, design and access to of 2 (two) wheelchair user dwellings.

The units identified as wheelchair housing shall comply with Building Regulations Operational Requirements M4 (3) Category 3: Accessible and adaptable dwellings (2015 edition).

Evidence of compliance shall be notified to the building control body appointed for the development in appropriate Full Plans Application or Building Notice or Initial Notice to enable the building control check compliance.

The development shall be carried out and maintained strictly in accordance with the approved details and be implemented prior to first occupation of the development hereby approved.

- 7) Prior to carrying out any above ground works of the building hereby approved, details shall be submitted to and approved, in writing, by the Local Planning Authority to demonstrate that such building or such part of a building can achieve a Part 2 "Secured by Design" Accreditation.

The development shall only be carried out in accordance with the approved details.

Within three months of first occupation of each building or part of a building or use, a "Secured by Design" accreditation shall be obtained for such building or part of such building or use.

- 8) The development shall achieve carbon emission reduction savings of no less than 35% below the Target Emissions Rate of Part L of the Building Regulations (2013). Prior to first occupation a statement (with supporting evidence) shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the above has been achieved.
- 9) Before the development hereby permitted commences at the site, a scheme showing proposed landscaping, shall be submitted to and approved in writing by the Local Planning Authority. The new planting shall be carried out in the first planting and/or seeding season following the first occupation of the building(s)/commencement of the use and shall comply with the requirements specified in BS 3936 (1992) 'Specification of Nursery Stock Part 1 Trees and Shrubs', and in BS 4428 (1989) 'Recommendations for General Landscape Operations'. None of the new trees, plants or shrubs planted shall be lopped or topped within a period of five years from the completion of the development. Any trees, plants or shrubs, which, within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season, in accordance with the approved scheme. The approved landscaping scheme shall be maintained thereafter.
- 10) Building, engineering or other operations such as demolition, works preparatory to or ancillary to the construction shall take place only between the hours of 8:00am and 6:00pm Mondays to Fridays and between the hours of 8:00am and 1:00pm Saturdays only and no works shall be carried out at any times on Sundays or Public Holidays.
- 11) Before the development hereby permitted commences at the site, a scheme shall be submitted to and approved in writing by the Local Planning Authority describing the means by which construction activity at the site and construction traffic to and from the site shall be controlled.

The scheme shall include measures for:

- a) construction traffic routes;
- b) construction traffic washing;
- c) public highway cleaning;
- d) dust suppression;
- e) noise suppression;
- f) hours of work;
- g) construction waste disposal.

The development hereby permitted shall only be carried out and completed in accordance with the approved scheme.

- 12) No impact piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water infrastructure and the programme for the works) has been submitted to and approved in writing by the Local Planning Authority. Any piling must be undertaken in accordance with the approved piling method statement.
- 13) Before the substructure is completed at the site, details of measures to be taken to insulate and/or screen from external noise the residential units and amenity areas hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The measures as approved shall be provided at the site before any residential unit is first occupied, and retained thereafter in accordance with the approved details.
- 14) Prior to first occupation of the residential development hereby approved, details of all permanent external lighting, including the location, specification, fixtures and fittings, measures to reduce light spillage, and the maintenance of such external lighting shall be submitted to and approved in writing by the Local Planning Authority before the external lighting is installed. All external lighting as approved shall be installed prior to first residential occupation and shall be installed and maintained in accordance with the approved details and not altered without further permission from the Local Planning Authority.
- 15) Before first occupation, the development hereby approved shall comply with Building Regulations Optional Requirement Approved Document G2 – Water efficiency (2015 edition). Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
- 16) Notwithstanding the details submitted with the application hereby approved, prior to commencement of the development, details of sustainable drainage measures/surface water run-off attenuation measures shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall:
 - a) provide information about the design storm period and intensity, the method employed to delay and control surface water discharged from the site and measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - b) include a timetable for its implementation: and,
 - c) provide a management and maintenance plan for the lifetime of the development.

The development shall only be carried out strictly in accordance with the approved details.

- 17) Before the development hereby permitted is first occupied, a car parking management plan shall be submitted and approved in writing by the Local Planning Authority outlining how the car parking spaces as per

layout plan 1438_P_01 shall be allocated between future residents of the development.

- 18) The car parking spaces shown on the plans hereby approved, shall be provided at the site prior to first occupation of the development and thereafter permanently maintained for the parking of private vehicles associated with the development and for no other uses.
- 19) Before the development hereby permitted commences at the site a scheme shall be submitted to and approved in writing by the Local Planning Authority describing the means by which the provision and implementation of transport improvements in the vicinity of the site are to be achieved. The agreed measure shall form part of a S278 Agreement between the Council and the developer and works shall be undertaken to an agreed time frame. The development shall only be carried out in accordance with the approved scheme.
- 20) Prior to first occupation of the development hereby approved, details of electric charging points to be provided within the car park shall be submitted and agreed by the Local Planning Authority. The development shall be completed in accordance with the details approved.