



Appeal Decision

Site visit made on 19 June 2017

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 31 July 2017

Appeal Ref: APP/B5480/W/17/3171663

119 Marlborough Road, Romford RM7 8AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Tony Budge, Destiny Homes against the decision of the Council of the London Borough of Havering.
- The application Ref P1336.16, dated 8 August 2016, was refused by notice dated 11 October 2016.
- The application sought planning permission for the change of use from A2 to residential; the demolition of the disused commercial premises and the erection of 2 no. 1 bedroom flats and 2 no. 2 bedroom flats, with associated amenity space, car parking, access, landscaping, and refuse storage without complying with conditions attached to planning permission Ref P0259.14, dated 31 December 2014.
- The conditions in dispute are Nos 2 and 11 which state that:
 - 2) *The development hereby permitted shall be carried out in accordance with the following approved plans: drawing nos. 13/28/01, 13/28/02, 13/28/03, 13/28/04.*
 - 11) *No dwelling in the development hereby approved shall be first occupied, until 21 vehicle parking spaces have been made available for use by the residents of the dwellings in Calgary Court, and 6 vehicle parking spaces and a store for 6 bicycles for the residents of the dwellings hereby approved, in accordance with a scheme, which has been submitted to and approved in writing by the local planning authority. The vehicle parking spaces shall not thereafter be used for any purpose other than the parking of vehicles.*
- The reasons given for the conditions are:
 - 2) *Otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.*
 - 11) *The proposal is a second phase of the Calgary Court development. A condition is required to ensure the implementation of vehicle parking spaces to serve the 2 developments to create a satisfactory overall residential layout and adequate vehicle parking, and in the case of the appeal development, bicycle parking in the interests of sustainable travel choices.*

Decision

1. The appeal is allowed and planning permission is granted for the change of use from A2 to residential; the demolition of the disused commercial premises and the erection of 2 no. 1 bedroom flats and 2 no. 2 bedroom flats, with associated amenity space, car parking, access, landscaping, and refuse storage at 119 Marlborough Road, Romford RM7 8AP in accordance with the application Ref P1336.16, dated 8 August 2016, without compliance with condition numbers 2 and 11 previously imposed on planning permission Ref P0259.14

(allowed on appeal Ref: APP/B5480/A/14/2226363), dated 31 December 2014, and subject to the conditions in the attached schedule.

Procedural Matters and Background

2. Planning permission for the block of four flats was granted on appeal, subject to a number of conditions. Condition 2 required the development to be carried out in accordance with approved plans which showed, amongst other things, the provision of six parking bays for the proposed flats and Condition 11 specified that six vehicle parking spaces were to be provided to serve the approved development, along with other parking facilities.
3. The application now under appeal sought to vary these conditions to provide only four car parking spaces for the development. A revised site layout plan shows four car parking spaces associated with the proposed development. These would partly occupy a different location to those shown on the approved drawing in that they would be situated nearer to the proposed flats and occupy space that was shown on the approved drawings as being part of a 'Grass Amenity Area'. The result would be a smaller area of communal outdoor space.
4. All six car parking spaces shown on the approved drawings were shown being accessed from the existing drive to the east of the proposed building whereas one space on the revised layout is shown being accessed from a drive situated to the west of the site and which runs between the residential property at 123 Marlborough Road and the site.
5. The Planning Practice Guidance (PPG) states that, in granting permission under section 73 of the Town and Country Planning Act 1990 (the Act), new conditions can be imposed provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. Notwithstanding the planning merits of the proposed changes, I have considered whether the consequential effects of varying the approved plans and providing fewer car parking spaces would be significant and materially alter the development that was subject to the original permission.
6. I sought the views of the appellant and the Council in this regard and have taken their views into consideration. Having done so I consider that the effect of varying the conditions, including the consequential effects, would not modify the development in such a way as to make it substantially different from that which has permission. In particular I note that the situation, footprint, design and appearance of the development would remain unchanged. Consequently, I consider that the proposal falls within the scope of section 73 of the Act.
7. The revised access route would mean vehicles using one car parking space travelling between the site and No 123, along an access that appears to serve an existing garage to the rear of No 123. This access route is outside the original application site. Whilst the revised drawings include this route within a 'red line' boundary such delineations are not necessary for the submission of details required for applications under section 73¹ as that shown on the location plan of the original permission remains relevant.
8. Nevertheless, the appellant has provided evidence that his company has a right of access along this route and on that basis I consider that it would be available

¹ The Town and Country Planning (Development Management Procedure) (England) Order 2015, Part 3, Article 7.

for use. The owner/occupier of No 123 was notified of the application and of the appeal. I do not consider that the interests of any party will have been prejudiced by considering the proposed changes under section 73.

Main Issue

9. The main issue raised by this appeal is the effect the revised parking would have on highway safety and on existing and future occupiers' living conditions.

Reasons

Highway safety

10. The effect of the proposed change would be to provide the equivalent of one parking space for each proposed flat. The Council's officer report refers to the reduction in spaces not meeting the Council's minimum parking standards in areas of poor accessibility. However, London Plan Policy 6.13 and Core Strategy² (CS) Policy DC33 both require that maximum standards are not exceeded rather than requiring a minimum number of spaces to be provided. The predominant housing types in the vicinity of the site are terraced houses with flats on some sites behind them. In such areas the table in CS Policy DC2 sets out a parking level of 1.5-1 spaces per unit, with which the proposed parking level would accord.
11. The Council consider that the area has poor public transport accessibility. The appellant points out that there are a range of retail and other services 350m to the east of the site with playing fields 500m away. Whilst other facilities are farther afield, the future occupiers of the development would not necessarily need to rely on the use of private motor vehicles for all their day to day needs as a result.
12. Nevertheless, given the size of the development and the configuration of the flats within it, it is possible that occupiers may have access to more than one car and their visitors may well arrive in cars. The proposed arrangement would mean that any such additional vehicles would be likely to be parked on the adjoining street in front of other residential properties in an area which the Council consider experiences heavy on-street parking.
13. However, given that the proposal would provide only two fewer than the approved provision of six spaces, any additional parking is likely to be limited in quantity. I have not been presented with any substantive evidence that any such additional on-street parking that may arise would necessarily lead to specific harmful effects on highway safety, including in the vicinity of the access to Calgary Court.
14. The revised parking arrangements would have a consequential effect on the location of vehicular access to one of the spaces which would increase the vehicle movements using that access. There would be sufficient space to enable vehicles to turn and thus enter and leave to junction with Marlborough Road in forward gear. The limited increase in vehicle movements on this existing access would not materially harm highway safety.

² Havering London Borough Core Strategy and Development Control Policies Development Plan Document, 2008.

Occupiers' living conditions

15. Additional on-street parking has the potential to cause some frustration or inconvenience to existing users by a slight reduction in availability. However, there is no evidence that the limited amount that the proposal could generate would materially harm the living conditions of existing residents or indeed those of future residents of the development.
16. Entering and leaving parking space 1 via the access to the west of the site has the potential to increase disturbance to the occupiers of No 123 as a result of increased vehicle movements. However, the movements associated with a single space would in all likelihood be limited in number and vehicles would be travelling at low speed. Any disturbance which would be likely to arise would be very limited in extent and duration and would not be of a nature which would materially harm the living conditions of the occupiers of No 123. For the same reason the living conditions of future occupiers of the flats would be similarly unharmed.
17. The proposal would also have a consequential effect on the configuration and amount of communal outdoor space which would be available to future occupiers of the development. There is no evidence to suggest that future occupiers would have insufficient private outdoor space.
18. The proposed communal outdoor space would be considerably smaller than that shown on the approved drawings. Rather than an 'L' shaped area it would consist of a linear area between the car parking spaces and the access, and would be detached from the private space to the back of the rear ground floor flat. Whilst the reduction in area and narrow configuration would reduce its functionality to a degree, it would not be so small that it would not still provide a reasonable area of useable outdoor space in which occupiers could relax.
19. I have not been directed to any policies or guidance which set out minimum areas for such space and supplementary guidance³ focuses on qualitative requirements. The area would be modest but it would remain overlooked by habitable rooms in the development and be easily accessible and legible to occupants. Compliance with other requirements in the supplementary guidance could be ensured through the consideration of details submitted for approval under conditions relating to landscaping and boundary treatments.
20. Therefore, although the revised plans would have some limited 'knock-on' effects on how the spaces are accessed and the amount of communal outdoor space, these effects would not be materially harmful and do not lead me to consider that the proposed variation of the conditions would be unacceptable.
21. The proposed changes would not conflict with development plan policies and the proposal would avoid causing material harm to highway safety or existing and future occupiers' living conditions.
22. Whilst the Council advise that they did not consider the consequential issues in their officer report there is no reason to suggest that they would not have been apparent from the submitted drawings. The Council refer to a previous application for a similar scale scheme which would have provided five spaces and which was refused on grounds similar to the Council's objections to the

³ Design for Living – Residential Design Supplementary Planning Document, 2010, in particular section 10.1, and Mayor of London Housing Supplementary Planning Guidance, 2016, in particular Standard 4.

variation of conditions before me. However, for the reasons set out above and considering the proposal on its own merits in light of development plan policy, this previous decision does not lead me to a different conclusion.

Conditions

23. The PPG advises that to assist with clarity, decision notices for the grant of planning permission under section 73 of the Act should also repeat the relevant conditions from the original permission, unless they have already been discharged. I have not been presented with any information regarding whether any of the conditions have been discharged. Therefore, for the avoidance of doubt I have imposed all the conditions from the original permission (apart from the replaced conditions 2 and 11) and, if any have already been satisfactorily discharged, this is matter which can be addressed by the parties.
24. The configuration, design and appearance of the development is shown on the drawings submitted with this application as being almost identical to that on the drawings specified in the original planning permission, with the exception of the position of a roof light. This difference does not have a material effect on the acceptability of the scheme and has not been raised by any parties nor has it been suggested that the drawings are not acceptable in any respect other than the Council's objections. I have therefore specified the drawings submitted with this proposal in Condition 2 as this gives certainty. For the reason set out in the Procedural Matters section above I have also included the original location plan.
25. I have amended condition 1 so that the three year time period runs from the date of the original permission in order to accord with section 73(5) of the Act.

Conclusion

26. For the reasons given above, and having had regard to all other matters raised, the proposal would not materially harm highway safety or occupiers' living conditions. The development would comply with the development plan in those respects and the appeal is therefore allowed. In accordance with section 73(2)(a) of the Act I have granted a new planning permission without the disputed conditions 2 and 11 but substituting them with new ones referring to the revised drawings and with a varied parking requirement.

Geoff Underwood

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 31 December 2017.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing nos. 13/28/01, 1438/10 Rev A, 1438/11 and 1438/12.

- 3) No development shall take place until details of existing and proposed site, road and building levels related to Ordnance Datum, or an identifiable temporary datum, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until samples of the materials to be used in the external surfaces of the development hereby permitted, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until a landscaping scheme of hard and soft landscaping, which shall include details of any existing trees and shrubs on the site, and those to be retained including measures for their protection during the course of development, has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall be carried out as approved.

All planting, seeding and turfing in the scheme shall be carried out in the first planting season following completion of the development. If, within a period of 5 years from the date of planting, any tree or plant is removed, uprooted, destroyed or dies, another of the same species and size shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

- 6) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before any dwelling hereby approved is first occupied or in accordance with a timetable approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and shall thereafter be retained.
- 7) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- a) the parking of vehicles of site personnel and visitors
 - b) loading and unloading of plant and materials
 - c) storage of plant and materials used in constructing the development
 - d) a scheme for the erection and maintenance of security fencing
 - e) measures to minimise noise, and if appropriate vibration levels, from construction activities, including a scheme to monitor noise and vibration
 - f) the siting and design of temporary buildings
 - g) wheel washing facilities
 - h) measures to control the emission of dust and dirt during construction
 - i) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 9) Prior to the commencement of development hereby permitted, details of the measures to be incorporated into the development demonstrating how "Secured by Design" accreditation may be achieved shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) No dwelling in the development hereby approved shall be first occupied, until provision for the storage of refuse awaiting collection has been made in accordance with a scheme, which has been submitted to and approved in writing by the local planning authority.
- 11) No dwelling in the development hereby permitted shall be first occupied until 21 vehicle parking spaces have been made available for use by the residents of the dwellings in Calgary Court, and 4 vehicle parking spaces and a store for 6 bicycles for the residents of the dwellings hereby permitted, in accordance with a scheme which has been submitted to and approved in writing by the local planning authority. The vehicle and bicycle parking spaces shall not thereafter be used for any purpose other than the parking of vehicles and bicycles.
- 12) No construction works or deliveries into the site shall take place other than between the hours of 0800 to 1800 hours Monday to Friday and 0800 to 1300 hours on Saturdays, and not at all on Sundays, Bank or Public Holidays, unless otherwise agreed in writing by the local planning authority.
- 13) The building shall be constructed so as to provide sound insulation of 45 DnT,w + Ctr dB (minimum values) against airborne noise and 62 L'nT,w dB (maximum values) against impact noise, unless otherwise agreed in writing by the local planning authority.
- 14) The ground floor, first floor and second floor windows serving bathrooms, en-suite rooms and wcs shall be fitted, and permanently retained, with obscure glass.

- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows other than those expressly authorised by this permission shall be inserted at ground, first and second floor levels within the elevation facing no. 123 Marlborough Road.
- 16) The flat roof areas with the exception of the first floor balcony for flat 4, shall not be used as a balcony, roof garden or similar amenity area without the grant of further specific permission from the local planning authority.