
Appeal Decision

Site visit made on 12 June 2017

by Rachel Walmsley BSc MSc MA MRTPI

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

Decision date: 06 September 2017

Appeal Ref: APP/B5480/W/17/3169824

Land to the Rear of 279 Straight Road, Straight Road, Romford RM3 7JS

- 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 Taylor against the decision of the Council of the London Borough of Havering.
 - The application Ref P1714.16, dated 21 October 2016, was refused by notice dated 6 January 2017.
 - The development proposed is alterations to car parking area, to existing flats and redevelopment of rear of existing premises to provide 1 no two bedroom two storey dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. These are:
 - (i) the effect of the proposal on the living conditions of future and neighbouring occupiers, with particular regard to outdoor space and outlook;
 - (ii) the effect of the proposal on the character and appearance of the area; and,
 - (iii) whether the development should make a contribution towards education infrastructure.

Reasons

Living conditions

3. The Residential Design Guide¹, whilst not specifying the amount of outdoor space a new development should provide, seeks to ensure that every home has access to amenity space that is of an acceptable quality and is useable. This is supported by paragraph 17 of the National Planning Policy Framework (the Framework) which requires development to achieve a good standard of amenity for all existing and future occupants. The garden area for the new dwelling would be surrounded on most sides by high walls and adjoined by a parking area. Residents would therefore feel enclosed within the space and be

¹ Design for Living, Residential Design, Supplementary Planning Document (Adopted 2010)

overlooked. This would not amount to the quality outdoor space which the design guide encourages.

4. The garden area retained for the 8 flats at No 279 Straight Road would be limited in size for multiple occupants to enjoy the outdoors and carry out a diverse range of activities expected within a garden. I recognise that the wall to the car parking area would reduce any noise and disturbance from moving vehicles, however, this does not overcome the harm related to the size of the garden. The appellant suggests that the existing space is rarely used however I do not have any substantive evidence of this to consider the size any more appropriate.
5. The outlook from the properties fronting Grange Road and from the flats at No 279 Straight Road would change as a result of the development. The two storey element of the new dwelling which would impact most on outlook would be a distance from both properties for the development to not be overbearing on or create a sense of enclosure for existing residents and therefore would not have a discernible effect on their living conditions. The Council also raised concern for the impact the development would have on resident's enjoyment of the gardens immediately south of the appeal site. Similarly, with the two storey element of the development being an acceptable distance from the gardens, any sense of enclosure would be averted.
6. In all, therefore, whilst finding a lack of harm regarding outlook, the outdoor space for future and existing occupiers would be poor quality which would be harmful to the living conditions of these residents and as a result would be contrary to the Residential Design Guide and the Framework.

Character and appearance

7. The appeal site is within a residential area and an urban block of frontage properties that are within mostly long and narrow plots that afford space to the front and rear. This pattern of development, combined with the domestic scale of the buildings, gives the area a relaxed and open character. Beyond the immediate confines of the urban block are large open spaces, however, these are not apparent from the appeal site to have implications for the development proposed.
8. On plan, the development would appear incongruous within its surroundings, introducing backland development into an area that is dominated by frontage properties. However in reality, the development would not be seen from public view; the new dwelling would be set well back from the street and behind existing buildings, including those on Grange Road. The development, therefore, would not impact on the relaxed and open character of the area. As a result, the development would not be contrary to policy DC61 of the DPD² which seeks development that responds to and respects local building forms and patterns of development.

² Havering London Borough, Core Strategy and Development Control Policies Development Plan Document (Adopted 2008)

Need for infrastructure

9. Policies 8.2 of the London Plan³ and DC72 of the DPD encourage the use of financial contributions to address strategic and local development priorities and help provide the infrastructure that is necessary to mitigate the impact of development. Policy DC29 of the DPD, together with the Supplementary Planning Document on Planning Obligations⁴ (the SPD), are more specific, supporting payments for school infrastructure, including primary and secondary education facilities. These policies are broadly consistent with paragraph 203 of the Framework which explains that planning obligations may be sought to mitigate the impacts of new development.
10. There is no evidence before me to suggest that the appeal proposal would generate any demands on specific schools, such that the contribution sought could reasonably be regarded as being directly related to it. Indeed, the evidence implies that the financial contribution has less to do with mitigating the impact of the development than it has with securing a generic contribution towards unspecific education infrastructure projects in the area.
11. Following the Court of Appeal judgement dated 11 May 2016⁵, legal effect is given to the policy set out in the Written Ministerial Statement (WMS). It explains that section 106 planning obligations should not be sought to secure contributions from developments of 10 units or less, and which have a maximum combined gross floorspace of no more than 1000 sqm (gross internal area). Paragraphs 013-017, 019-023 and 031 of the Planning Practice Guidance (the Guidance) elaborate, stating that affordable housing and tariff style contributions should not be sought from the small scale developments identified.
12. I am required to determine the appeal in accordance with the development plan unless material considerations indicate otherwise. The WMS, as an expression of Government planning policy, is a material consideration to which I must give considerable weight.
13. Technical Reports 1 and 2⁶, which inform the SPD, identify the standard charge for application per dwelling; in this case a sum of £6000 towards education provision. The £6000, as acknowledged within the Council's Statement, is from a tariff style based list. Whilst this list is not a charging schedule, it is a figure derived from a fixed sum of £20,444 per dwelling towards infrastructure and discounted to take account of viability. The Guidance explains that tariff style contributions are those that contribute to pooled funding pots intended to fund the provision of general infrastructure in the wider area. The financial contribution would be used in this way, to fund the provision of general education infrastructure.
14. In my judgement, therefore, the £6000 towards education infrastructure would be a tariff style contribution. As the development is for less than 10 dwellings,

³ The London Plan, The Spatial Development Strategy for London, Consolidated with Alterations since 2011 (March 2016)

⁴ Planning Obligations, Supplementary Planning Document (February 2013). London Borough of Havering Local Development Framework.

⁵ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.

⁶ Planning Obligations Supplementary Planning Document: Technical Report 1: Assessment of Infrastructure Costs (adopted February 2013) and Technical Report 2: Viability Assessment (adopted February 2013)

I find, in line with the WMS and the Guidance, that a financial contribution towards education facilities within the area would not be appropriate.

15. I am also mindful of the pooling restrictions set out in the Community Infrastructure Levy (CIL) Regulations. These prohibit the pooling of more than five planning obligations towards a single infrastructure project. The Council states ongoing monitoring would ensure that no more than five separate contributions would be used on any particular project. Nonetheless, in the absence of any clarity about what the obligation would be spent on, there can be no certainty on the basis of the evidence before me that the obligation sought would not fall foul of the pooling restrictions.
16. I am aware of recent appeal decisions that post-date the Court of Appeal's judgement and that conclude differently on this matter. However, the WMS does not appear to have been a consideration in these appeals and, therefore, I do not consider them to set precedents that I am bound to follow.
17. In short, there is an absence of any firm evidence linking the effects of the appeal with an adverse impact upon a specific education facility; there is a failure to demonstrate that the obligation would meet the CIL Regulation pooling test; and a material consideration, in the form of the WMS is powerful enough in this instance to override relevant development plan policy. I conclude, therefore, that there is no requirement for the appeal proposal to make a contribution towards education infrastructure.

Other matters

18. The development would contribute to local housing need within an accessible location, as supported by policy CP1 of the DPD and policy 3.3 of the London Plan⁷. Nonetheless, there is no evidence before me to suggest that the Council is unable to demonstrate a five-year supply of deliverable housing sites. The contribution that one dwelling would make to housing land supply overall, therefore, is modest.
19. I note that objections were not raised to the principle of the development on the site and to the parking arrangements proposed. On the basis of the evidence before me I concur. Furthermore, the lack of harm identified by the Council with regards to privacy and light, the proposed architectural form and materials is noted. However these matters are typical of a well-designed development and without anything to indicate that rudimentary standards would be exceeded, they are neutral in the planning balance.

Balancing and Conclusion

20. I have found that the development would not have a harmful effect on the character and appearance of the area and a contribution towards education infrastructure is not required. Nonetheless, these factors are outweighed by the harm that I have found to the living conditions of future and neighbouring occupiers. This factor is decisive, particularly within the context of the Framework, which requires development to secure a good standard of amenity for all.

⁷ The London Plan, the Spatial Development Strategy for London, consolidated with alterations since 2011 (March 2016)

21. In all, therefore, I find that the proposed development would be contrary to the development plan and the Framework. Thus, for the reasons given above, and taking all other matters into consideration, I conclude that the appeal is dismissed.

R Walmsley

INSPECTOR