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## Appeal Decision

Site visit made on 21 November 2017

**by Katie McDonald MSc MRTPI**

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

**Decision date: 18<sup>th</sup> December 2017**

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**Appeal Ref: APP/B5480/W/17/3181073**

**Land rear of 181-177 Marlborough Road, Romford, Essex RM7 8AP**

- 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 Jim Chambers against the decision of the Council of the London Borough of Havering.
  - The application Ref P0788.17, dated 14 April 2017, was refused by notice dated 27 June 2017.
  - The development proposed was originally described as '*residential development of land at the rear of 181-177 Marlborough Road, Romford, RM7 8AP (see existing site plan+ DRWG. Nos 2016/12/04A and 05A)*'.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The description of development was changed to 'residential development comprising 5 no. flats' when the application was validated by the Council. The Council dealt with the application on that basis and so shall I.
3. An amended plan (2016/12/05 B) was submitted which altered the location of the bedroom window in an upper floor flat from side to rear. The window was not removed from the proposed elevations on the amended plan, but this matter could have been conditioned accordingly. In comparison to the original plans, the proposed change would be an improvement to the living conditions of neighbouring properties by reducing overlooking. As nobody would be disadvantaged by this plan and having applied the 'Wheatcroft Principles'<sup>1</sup>, I have taken it into account in my decision.

### Main Issues

4. I consider the main issues to be;
  - i) Whether the proposal makes adequate provision for any additional need for education infrastructure arising from the development;
  - ii) The effect of the proposal on the living conditions of the neighbouring occupiers; and,
  - iii) The effect of the proposal on the character and appearance of the area.

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

## Reasons

5. Situated to the rear of 177-181 Marlborough Road, the site is a large, relatively square and flat garden plot, featuring a sizable garage and outbuildings that run along the boundary with Lisa Court. The area has a suburban character, including numerous small cul-de-sacs or pockets of rear garden development off the main roads. The site would be accessed from Blandford Close with a car parking area to the front.
6. The proposal is for 5 flats, 4 being within the two storey elements and one being in a single storey projection to the rear. Each flat would have access to a shared amenity area. Three of the flats would provide 1 bedroom, and 2 of the flats would provide 2 bedrooms.

### *Education provision*

7. Policy DC72 of the London Borough of Havering Core Strategy and Development Control Policies Development Plan Document (July 2008) (CS) requires new developments provide sustainable development by contributing towards infrastructure by way of a planning obligation, where appropriate tests are met. Policy DC29 sets out that the Council will seek payments from residential developments for the capital infrastructure of schools in order to meet demands generated by the development. Furthermore, Policy 8.2 of the London Plan (March 2016) (LP) details that development proposals should address strategic as well as local priorities in planning obligations.
8. The Planning Obligations Supplementary Planning Document (February 2013) (SPD) pre-dates the changes to the Community Infrastructure Levy Regulations 2010 (as amended) (the Levy), which restricts the pooling of no more than five planning obligations towards a single infrastructure project. The evidence background to the SPD, which includes the Technical Report 1 Assessment of Infrastructure Costs (TR1) and the Technical Report 2 Viability Assessment are considered to be relevant.
9. In addition, the Council's Commissioning Plan for Education Provision 2015/16 - 2019/20 details that there is a shortfall of school places in early years, primary, secondary and post-16 education in the borough. The cost of mitigating the effect of each new dwelling upon education provision equates to £8,672 (as set out in the TR1 Table 4.2).
10. The Council has advised that they would require a contribution of £6,000 per dwelling, with an additional 3% of the total obligation towards monitoring. I note that this appears to be a 'fixed' fee per dwelling. However, the actual cost (£8,672) includes every stage of education. A child that occupies one of the proposed dwellings may not require all stages of education, dependent upon their age, and thus I find that £6,000 is a reasonable and sensible figure to offset the effect of the development.
11. I note that the Council has not identified a specific project at this stage, which is in part due to not knowing when a development will commence, but has detailed that the monies, once received, would be allocated together with 4 other contributions towards a specific project. Furthermore the appellant, through negotiation, could have agreed a list of schools with the Council to be included in any obligation.

12. The Council also detail that they have a robust financial monitoring system to ensure that pooling does not occur, which is supported by the monitoring cost. I also note the recent appeal decisions that have been provided by the Council that support the principle of securing contributions towards education provision.
13. Therefore, having had regard to the Planning Practice Guidance and the Written Ministerial Statement of 28 November 2014, on the balance of evidence, I am satisfied that this is not a tariff style contribution, and the need for a planning obligation would meet the tests set out in paragraph 204 of the National Planning Policy Framework and the regulatory provisions of the Levy.
14. Nevertheless, and notwithstanding my findings above, the proposal would provide 3, 1 bedroom flats. I consider it would be unlikely that a 1 bedroom flat would be used by families and would not generate a demand upon the capital infrastructure of schools. Whilst the SPD does not set a threshold in dwelling size, a planning obligation should be reasonably related in scale and kind. Consequently, I do not find that the proposal should provide a financial contribution towards education in the case of the 1 bedroom flats.
15. However, the 2, 2 bedroom flats could realistically be used by a family, and consequently, would introduce a further pressure upon the education provision in the area. Whilst I note the appellant expressed the intention to provide a planning obligation, none has been received. In the absence of this, the proposal would be unacceptable and fail to meet Policies DC29 and DC72 of CS and Policy 8.2 of the LP.

#### *Living conditions*

16. The proposal would introduce a single and two storey building to the rear of 179 and 181 Marlborough Road. It would be set around 2m from the rear boundary. Due to the two storey height and close proximity to the rear garden of No 179, the proposal would lead to a sense of dominance and enclosure upon the rear garden area. This would unacceptably affect the living conditions for the occupants of No 179.
17. Having regard to the amended plan, and given that the relocation of the first floor bedroom window in north elevation could be secured by a planning condition; there would be no adverse overlooking or loss of privacy for the occupants of No 179.
18. Owing to the height and position of proposed building in relation to neighbouring gardens, loss of sunlight and overshadowing would not be unacceptable.
19. Whilst I have found some elements of the proposal to have an acceptable effect upon neighbouring living conditions; the effect of the development upon the rear garden of No 179 would be unacceptable, contrary to Policy DC61 of the CS, in so far as it seeks to protect amenity.

#### *Character and appearance*

20. The area is characterised by numerous backland developments, indeed the main access to the site would be through a cul-de sac that runs to the rear of dwellings on Marlborough Road. To the west of the site lies another flatted back land development. This garden plot, to my mind, appeared quite unusually

large and unique in this setting, where gardens to other properties were shorter or comprised of backland development. Furthermore, the plot was not overly prominent due to the existing timber fencing and its location off a car parking court on Blandford Close.

21. Therefore, I find that developing this rear garden plot would relate to existing patterns of development that flank either side and are prevalent in the local area, complementing the character of the area. The overall design, roof pitch and materials would respond to local building forms and respect the scale, and massing of the surrounding physical context.
22. The height of the proposal would be similar to that of Lisa Court and whilst it would occupy a larger footprint, I find that the proposal would make efficient use of land. Indeed, the density of the proposal would be in accordance with Policy 3.4 of the LP. Amenity space, refuse and cycle storage and car parking would be provided around the building and I do not find that the site would appear cramped.
23. The proposal would introduce parking for 10 cars, which would be constructed in tarmac. However, save for some pedestrian walkways, the scheme includes replacement planting, additional landscaping and what would appear to be grass for the remaining parts of ground. I find that the proposal would not result in excessive amounts of hardstanding, and in the event that the appeal succeeded, this matter could be satisfactorily conditioned.
24. Even though the site would become developed, thus changing the immediate open setting and outlook from the residential properties on Marlborough Road, based on my findings above, this would not be harmful to the character and appearance of the area.
25. I find that the proposal would be compliant with Policy DC61 of the CS, in so far as it seeks to maintain, enhance or improve the character and appearance of the local area.

### **Other matters and conclusion**

26. The proposal would assist in meeting local housing need and is located close to services. Furthermore, I have found the proposal to have an acceptable effect upon the character and appearance of the area and I have had regard to the comments made in support that the proposal would provide opportunities for first time buyers.
27. Nonetheless, the failure to mitigate the effect of the development upon education provision and the unacceptable effect of the proposal upon the living conditions of No 179 substantially outweighs all the benefits.
28. For the reasons given above, I conclude that the appeal should be dismissed.

*Katie McDonald*

INSPECTOR