



Appeal Decision

Site visit made on 19 December 2017

by David Cliff BA Hons MSc MRTPI

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

Decision date: 31st January 2018

Appeal Ref: APP/U5360/W/17/3180454

Land rear of Thirlmere House, Howard Road, London N16 9PR

- 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 Nirvana Estates Ltd against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2017/1482, dated 7 April 2017, was refused by notice dated 20 June 2017.
 - The application sought planning permission for the 'erection of six (6) terraced three-storey dwellings comprising 5 x 4 bedroom and 1 x 3 bedroom to the rear of the property along with associated car parking, cycle spaces, access and landscaping' without complying with a condition attached to planning permission Ref 2013/1614, dated 13 November 2014.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details.
 - The reason given for the condition is: To ensure that the development hereby permitted is carried out in full accordance with the development hereby permitted.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The s73 planning application seeks two changes to the originally approved scheme. Firstly it seeks a variation to the approved plans to allow permanently fixed tables and benches in the front gardens of each house. This has not been objected to by the Council and it is not necessary for me to consider it any further as part of this appeal. Secondly, it seeks to vary the s106 agreement accompanying the original planning permission to remove the 'car-free' restriction preventing occupiers of the development from obtaining residents car parking permits. The Council objected to this second element as set out in its reason for the refusal of the application.
3. During the course of the appeal I wrote to the main parties querying the ability to amend an existing s106 agreement in the way proposed through a s73 application. Whilst it objects to the removal of the car-free restriction, the Council responded stating it considers the mechanism to be an appropriate way of varying the s106. The appellant also sets out why it considers the mechanism to be appropriate. I have gone on to consider the appeal on this

basis, as sought by the appellant and considered by the Council. In any case, given my conclusion on the merits of the appeal and subsequent decision, there are no procedural implications arising in this instance.

Main Issue

4. Taking account of the above, the main issue is whether the scheme should be a car-free development taking account of the relevant development plan policies and any other material considerations.

Reasons

5. The site is located in an area with a PTAL rating of 5 and bordering on a PTAL 6 area. It is within a Controlled Parking Zone area. It was evident from my site visit that the site enjoys very good accessibility to local facilities, including shops and schools, without the need for the use of a private car. The Council also draws attention to the good cycling links including the local *quietways*.
6. Furthermore, there are Car Club spaces within reasonable walking distance of the site which offer the possibility of the occasional use of a car where this is necessary.
7. The relevant development plan policies support car free development. The Council states that the reasons for doing so are to promote sustainable transport methods, reduce congestion, improve air quality and improve road safety. The development plan policies are supportive of measures to support sustainable transport including alternative forms of transport to the private car. Policy DM47 of the Hackney Development Management Local Plan 2015 states that car-free and car capped developments are expected in most locations throughout the borough, in particular where there is a high PTAL rating (4, 5 or 6).
8. The appellant has submitted a parking stress survey, notwithstanding that one is only required for developments outside of a CPZ. The survey shows levels of parking stress of an average of 84.2% within approximately 500m of the site and a higher parking stress average of 92.3% within 200m of the site. The latter I consider being the most relevant figure, as whilst drivers will not simply stop looking at a point 200m from the site, they are less likely to want to search for spaces significantly over 200m away from their home. Whilst there are some spaces available based on this survey the parking stress level appears to be reasonably high in the vicinity of the site. From the evidence it does seem likely that future occupants of the development would generally be able to find a space. However, it seems to me that removing the car-free restriction in this case would put extra pressure on existing parking levels, increasing the likelihood in the future of the demand for spaces exceeding the supply.
9. Whilst car ownership levels in the borough are fairly low there would still be likely to be an increase in the demand for parking arising from the development. Such an approach would be contrary to the relevant development plan policies which seek to restrict car use, promote sustainable forms of transport and prevent an increase in congestion and pollution, particularly in locations such as the appeal site which enjoys very good accessibility to shops, services and public transport.

10. Given their size and number of bedrooms, the permitted houses would be likely to be attractive to family occupants. I note that the use of cars for shopping and visiting is given a higher priority than commuting by car in the Council's Movement Hierarchy. However, it is still near the bottom of the hierarchy. In this case there seems to be a good range of shops, facilities and schools within proximity of the site. Where such facilities cannot be reasonably reached by foot, the site appears to be well served by public transport, hence its high PTAL rating. The Council also refers to car club spaces being available near to the site, which provides opportunities for car use on those occasions where it might be necessary. I therefore consider that families would not reasonably need to be dependent on the use of the private car. Furthermore, where families are concerned it is more likely that drivers would want to park very near to the development, thereby increasing the parking stress in the close vicinity of the site.
11. I therefore find that the proposed removal of the car free restriction would be contrary to the relevant transportation aims of policy 33 of the Hackney Core Strategy 2010, policies DM45, DM46 and DM47 of the Hackney Development Management Local Plan 2015, and policy 6.13 of the London Plan 2016 and the National Planning Policy Framework. I have not found policies 6.3, 6.9 and 6.10 of the London Plan to be of direct relevance to this proposal. However, this does not alter my overall finding that the proposal would not accord with the development plan when considered as a whole.

Conclusion

12. The proposed variation to the s106 agreement would conflict with the development plan when read as a whole and there are no other considerations which outweigh this finding. Therefore, for the reasons given, and taking all other matters into consideration, the appeal should be dismissed.

David Cliff

INSPECTOR