



Appeal Decision

Site visit made on 21 May 2019

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2019

Appeal Ref: APP/J1915/W/18/3208332

The Bridge House, North Road, Hertford SG14 1NA

- 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 Ross Smith, Regenta Development Ltd against the decision of East Hertfordshire District Council.
 - The application Ref 3/17/2655/FUL, dated 10 November 2017, was refused by notice dated 1 February 2018.
 - The development proposed is the demolition of existing property and erection of a 3 storey building comprising 14no residential units (14 x 2-bed) (Use Class C3) above retail use at ground floor (Use Class A1) measuring 396 sq. m (GIA) along with associated landscaping and provision towards 31 no car and 18 cycle spaces.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The East Herts District Plan was adopted by the Council on 23 October 2018 and the policies within this plan are now afforded full weight. The adoption of the District Plan has resulted in the Saved Policies of the East Herts Local Plan Second Review being superseded and they therefore no longer carry weight. I have considered the appeal on this basis.

Main Issues

3. The main issues are the effect of the development on:
 - the provision of community facilities;
 - the character and appearance of the area;
 - the living conditions of nearby occupiers;
 - highway safety; and
 - Whether the development would achieve suitable drainage methods.

Reasons

Provision of community facilities

4. The appeal site is located on North Road and comprises a former public house. The building is set at an irregular angle within the site and is surrounded by an

extensive area of hardstanding which formerly provided car parking. The public house is no longer in use. The site is currently boarded up with locked gates at the access. In proximity to the site is Hertford Station and its car park runs adjacent to the side boundary. The remainder of the site is flanked by residential properties comprising North Road opposite and Cedar Close which wraps around the side and rear of the site.

5. The proposed development would involve the demolition of the existing building and the construction of a three-storey building which would provide residential accommodation to the upper floors and commercial premises to the ground floor. The existing building has been vacant since 2015.
6. The Council identify the site as a community facility despite the fact that it does not feature within the Council's Assets of Community Value Register. Policy CFLR8 of the East Herts District Plan (2018) (District Plan) requires proposals for the loss of public buildings to clearly show that the facility is no longer needed, amongst other things.
7. The Appellant has provided evidence that the property has been marketed for a continuous period of time during which limited enquiries were received, and none of which were interested in the use of the property as a public house. The District Plan policy does not indicate the type or duration of the marketing exercise that should be undertaken, and I consider that the information before me sufficiently demonstrates a lack of demand for the appeal site in its current form.
8. The site has a certificate of lawful use which allows for a change of use from public house to a retail use (A1) as well as an additional certificate relating to the use of the site as a public car park. The Appellant advises that they intend to implement the fall-back position, however consider the proposed scheme to be an improvement over this alternative option. In considering this issue a key consideration is the likelihood of the fall-back option coming forward. Although the site remains vacant, the Appellant advises of the intention to carry out the alternative change of use in the event that this appeal is unsuccessful, and I have been presented with limited evidence that would lead me to doubt this intention. As such, I give the fall-back position significant weight in my consideration of the proposal.
9. I have had regard to the examples of appeal decisions on this matter presented by both parties. However, I have not been presented with the full circumstances of these cases to enable me to determine if they are wholly comparable to the case before me. I have therefore considered this matter on the basis of the evidence before me.
10. Having regard to the length of time the property has been vacant and the limited interest shown during the marketing process, I find that the loss of the existing use has been sufficiently justified in this instance. Consequently, the development would comply with Policy CFLR8 and paragraph 92 c) of the National Planning Policy Framework (2019) (the Framework).

Character and Appearance

11. The proposed building would be substantially larger than existing surrounding developments which, aside from the station, comprise residential dwellings of mainly two storeys. It would occupy a reasonably central location within the

- site and would be a larger and more prominent building than the current public house. Access to the site would be along the side boundary to the rear of the Cedar Close properties and would lead to a parking area to the front of the site to serve the retail unit. It would also extend to the rear of the site where resident parking would be provided. The proposal includes cycle parking and private and communal garden areas to the side and rear of the building.
12. The proposed development would comprise three-storeys with a flat roof. The design of the development would be contemporary with subservient elements and the inclusion of balconies to the front and rear elevations. The overall bulk of the building would be broken up somewhat by the lower elements and varied fenestration.
 13. The proposed design of the building would not reflect the more traditional dwellings and estates which are present in the surrounding area. Nevertheless, the appeal site is within a reasonably mixed area with the station close by, and the existing building on site is markedly different to others in the surroundings. Accordingly, I find that the proposed design would provide a suitable contrast and feature, and its overall height and scale would be adequately assimilated as a result of the varied land levels which rise significantly on the opposite side of North Road.
 14. I acknowledge that the existing site is laid to hardstanding around the current building, with trees and vegetation present around the edge of the site. However, the requirement to provide a number of parking spaces would result in a development that would be dominated by buildings and hard surfacing. Vehicles would occupy a significant proportion of the courtyards and would be parked close to the buildings. This would seriously limit the space available for trees, landscaping and planting to soften the overall appearance of the development. The addition of the delivery bay to the front of the site would further highlight the dominance of the parking areas to the detriment of the visual character of the area
 15. The proposed communal garden area and small areas of private garden and patios would be limited and have been clustered together in the rear corner of the site, behind the proposed building. As a result, this would not serve to reduce the dominance of the car parking areas and would not provide a meaningful area in which to encourage a sense of space or community.
 16. I therefore conclude that, whilst the proposed design and scale would not be unduly harmful to the character and appearance of the area, the overall layout involving large areas for parking and minimal landscaping would be detrimental. As such, the proposed development would fail to comply with Policies DES3 of the District Plan. These require development proposals to demonstrate how they will retain, protect and enhance existing landscape features and provide replacement planting schemes, amongst other things.
 17. In addition, although not specifically referenced within the refusal reasons, Policy DES4 is noted in the Council's delegated report under the Main Policy Issues section and I find this to be relevant to the proposal insofar as it requires development to be of a high standard of layout which makes the best possible use of land and maximises the opportunity for soft landscaping wherever possible. It would also fail to accord with the requirements of Section 12, paragraph 127 of the Framework.

Living Conditions

18. A number of dwellings along Cedar Close back onto the appeal site, with their rear gardens adjoining the rear and boundaries. The building would be tall, with a flat roof and would introduce a visually dominant development in terms of outlook from the rear windows and gardens of these existing dwellings. The inclusion of the balconies to the rear elevation of the units would result in a perception of overlooking and loss of privacy, made more apparent by the removal of trees to the rear and lack of additional planting. However, there is significant separation between the proposed building and neighbouring dwellings and therefore this would not give rise to unacceptable harm.
19. The properties along Cedar Close which back on to the side and rear boundaries of the site would be subject to a number of vehicle movements as a result of the positioning of the access and the car parking. The initial access point would not only serve the residential parking area but would also provide vehicular access for the retail unit.
20. The Appellant's Supporting Document Ref 659-SPD1 identifies the number of likely trips resulting from the development and identifies that this is relatively minor in comparison with the existing traffic flows. Nevertheless, I find that the location of the access and the likely vehicle movements within the parking area in proximity to the rear gardens of these properties would be likely to result in detrimental impacts on the living conditions of the occupiers of these properties, not only in terms of noise from engines, but also from car doors and vehicle fumes. Whilst only 13 of the spaces would be directly adjacent to the rear gardens of these properties the manoeuvring areas would remain in proximity.
21. Consequently, I find that the building, although large, would be located at a sufficient distance from the adjacent properties to not result in undue harm in terms of outlook and privacy. However, the location of the access and parking areas would give rise to unacceptable levels of noise and disturbance and would therefore result in harm to the living conditions of adjoining occupiers. The development would therefore fail to comply with Policies DES3 and DES4 of the District Plan which include the requirements for high quality development which avoids significant detrimental impacts on the amenities of occupiers of neighbouring properties.

Highway Safety

22. During the application process the Council in conjunction with the Highway Authority raised concerns over the level of information supplied. The Appellant has provided a Supporting Document Ref 659-SPD1 dated July 2018 in order to address the concerns raised by the Council. This document includes surveys of the access design, tracking, car parking, refuse collection arrangements as well as impacts on the existing highway and traffic flow and the impacts of the layby.
23. The Supporting Document identifies measures to improve pedestrian safety including tactile paving and dropped kerbs. It suggests the widening of the access to accommodate larger delivery vehicles visiting the retail premises and has demonstrated tracking for this type of vehicle. It also provides tracking to support the usability of the parking bays within the site and access for refuse collection vehicles.

24. The trip generation figures have identified that the proposed development would result in a relatively minor increase in traffic flows, totalling around 2.2% or 373 new vehicle movements in a 24-hour period.
25. I have considered the evidence put before me and on this basis, I find that that the information provided demonstrates that there would not be an unacceptable impact on highway safety and the cumulative impacts on the road network would not be severe. The findings of the Supporting Document could reasonably be secured by condition to ensure the highway safety impacts of the development could be satisfactorily achieved.
26. Accordingly, I find that with regard to matters of highway safety, it has been adequately demonstrated that the proposal would comply with Policy TRA2 of the District Plan and paragraphs 108 and 109 of the Framework insofar as they require development to ensure that safe and suitable access can be achieved for all users and avoid severe residual cumulative impacts on the road network. Notwithstanding this however, this does not outweigh my concerns regarding the layout of the site and parking areas identified above.

Drainage

27. The Appellant has provided a number of flood risk and drainage strategy documents following the initial concerns raised by the Council and the Lead Local Flood Authority. These have undertaken infiltration tests, reviewed the ground conditions and considered the required flood risk mitigation measures, amongst other things.
28. The Council have not provided additional comments in relation to these revised documents. However, having reviewed the findings, I consider that the information provided is sufficient to indicate that a suitable form of drainage and surface water management could be achieved on the site to ensure that the site would be adequately and appropriately drained and this could be further secured by conditions.
29. I therefore find that the proposed development would comply with Policies WAT1 and WAT5 of the District Plan and Section 14 of the Framework which seek to ensure that new development should not increase the likelihood of flooding and should build in resilience measures and should utilise the most sustainable forms of drainage and manage surface water run-off, amongst other things.

Planning Balance

30. The appeal site would provide 14 new housing units in proximity to a number of services and facilities, including the station and within the town centre. In addition, the development would reuse a vacant site. The Appellant advises that the end user of the retail unit would be Sainsbury's and the development would provide employment opportunities as part of the retail element as well as during the construction period.
31. In addition, returning to the issue of the fall-back position, the Appellant considers that this current proposal is an improvement over the change of use that could be implemented. However, taken collectively, I find these benefits are not sufficient to outweigh the harm which would arise for the above reasons.

Other Matters

32. During the application process only financial contributions towards highway works were sought from the development, which is acknowledged within the Appellant's Supporting Document. Subsequently, the County Council have identified education and library contributions, as justified within their statement in support of planning obligations sought towards Hertfordshire County Council (non highways) services. No legal agreement towards the highway or additional requirements has been provided. However, the provision of such an agreement would not be sufficient to outweigh the other substantive issues on matters of character and appearance and living conditions.

Conclusion

33. For the reasons given above, and having had regard to all matters raised including the principle of development, the planning history and pre-application process, I conclude that the appeal should be dismissed.

R Norman

INSPECTOR