The Planning Inspectorate

Appeal Decision

Site visit made on 22 July 2019

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 15th October 2019

Appeal Ref: APP/G2625/W/18/3214962
Shoemakers, Earlham West Centre, Enfield Road, Norwich, NR5 8AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made by Mr Binks of Manorlake Properties Ltd against the decision of Norwich City Council.
- The application Ref: 18/00521/F, dated 14 August 2018, was refused by notice dated 11 September 2018.
- The development proposed is described as: Shoemakers phase 2 to provide a new building of eighteen student flats with communal room (Sui Generis) and new refuse compound.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

   a) The effect of the proposed development on the character and appearance of the area

   b) Whether the proposed development should make provision for affordable housing

   c) The effect of the proposed development on the living conditions of future occupants, with particular regard to outlook, light, and internal and external living space

   d) Whether the proposal would increase flood risk, and

   e) Whether the proposal would make adequate provision for refuse storage and collection.

Reasons

Character and appearance

3. The appeal site is a compound which is used for the storage of construction materials. The proposal is for a four-storey building. The area around the appeal site is characterised by a mix of architectural styles. Opposite the site are three-storey, pitched roof buildings, with shops on the ground floor and residential accommodation on the first and second floors, mixed with single-

storey shops. The adjacent Shoemaker Court student housing complex, comprises flat-roofed blocks which step down from four to three storeys towards the appeal site. The impression of building heights stepping down from the Earlham West Centre (EWC) is further conveyed by the presence of two-storey dwellings, viewed looking north-west along Enfield Road. Twenty Acre Wood public open space (POS) is situated on the other side of the site.

4. The similar height of the four-storey block in the Shoemaker Court complex and three-storey buildings on the opposite side of Enfield Road, go some way to assimilate the proposal into its setting, viewed from the EWC. The backdrop of mature trees within the POS would have a similar effect. Moreover, the four-storey height of the proposed block would have a unifying, 'bookend' effect, in combination with four-storey elements of the adjacent development.

5. However - in the absence of a landscape buffer strip between the POS and the proposed block's side elevation, or vertical greening of the latter - the scale of the proposed building would result in a stark interface with the POS, viewed from north-west of the site. It is proposed to set the top floor back by 600m, which would go some way to reduce the impact of the front of the building. However, this would not sufficiently soften the interface with the POS, to the side.

6. To conclude on this main issue, the proposal would harm the character and appearance of the area. As such, it would conflict with Policy JCS2 of the adopted Joint Core Strategy for Broadland, Norwich and South Norfolk (2011, as amended 2014) (JCS) and Policy DM3 of the Norwich Development Management Policies Local Plan (2014) (DMP), which together seek to ensure that development complements the character and appearance of the area.

Affordable housing

7. Housing Delivery Policy JCS4 of the JCS requires that for a site of 18 proposed dwellings, 33% should be affordable housing. Whether or not the proposal comprises dwellinghouses - and therefore whether the affordable housing requirement of Policy JSC4 is engaged - is a matter of dispute between the main parties.

8. Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) sets out uses for dwellinghouses. The term 'dwellinghouse' is not defined in the Town and Country Planning Act 1990, however it has been held that the distinctive characteristic of a dwellinghouse is its ability to provide users with the facilities required for day-to-day private domestic existence. This definition would normally include flats because of their self-contained nature and independent residential use. Sui generis covers uses of land or buildings which do not fall into the use classes identified by the UCO.

9. The proposal is recognisably different in its accommodation mix from the adjacent complex. The proposal would comprise 13 studio flats and five two-bedroom flats. By comparison, the adjacent Shoemaker Court complex provides four studio flats and 16 three to seven-bedroom flats. As such, almost three quarters of the proposed flats would be studio flats, compared to less than a quarter in the adjacent complex. The proposal's much larger proportion of studio flats and, consequently, much smaller proportion of shared communal kitchen and living spaces would distinguish it in character from the adjacent Shoemaker Court student accommodation.

10. The studio flats, which make up the majority of the proposed accommodation, would each contain an open-plan bedroom/living room, kitchen and en-suite shower room. These facilities would provide the studio flats with a substantial degree of self-containment. It is proposed that they would be accompanied by a communal laundry room within the block for washing and drying clothes, along with outdoor amenity space, parking and refuse facilities to be shared with the adjacent Shoemaker Court complex. Together, the above elements would provide occupants with facilities required for day-to-day private domestic existence, and are characteristic of a use falling within the ambit of class C3 in the Schedule to the UCO. Moreover, workstations, and communal facilities such as laundry rooms and outdoor amenity space can be found in flatted developments available to non-students, as well as students. Therefore, such facilities would not, in themselves, mark the proposed development out as student accommodation.

11. Moreover, the proposed block would have its own main entrance door, separate from the adjacent student accommodation, and would be physically separated from the latter by an alleyway. There would be no internal access between the proposed and adjacent building. It is not guaranteed that the proposed and adjacent sites would remain in the same ownership in the future. Furthermore, no Section 106 agreement or alternative mechanism is proposed to secure access to joint facilities. The above factors, in combination, mean that the sharing of management and communal facilities for student accommodation with the adjacent Shoemaker Court complex during the lifetime of the proposed development is not assured.

12. The above factors, in combination, lead me to find that the proposed development would be a separate planning unit from the adjacent Shoemaker Court complex.

13. A planning condition to restrict occupancy to only students is suggested. However, the degree of self-containment which would be provided by the studio flats, and the lack of a mechanism to assure the proposal's joint management and operation with the existing Shoemaker Court student accommodation complex, is such that non-students, as well as students, could feasibly live in the proposed development. In such circumstances, it would be hard to readily distinguish between people living in the proposed development as students and non-students. As such, the suggested condition would not be capable of enforcement.

14. The proposed development would not have the format of cluster flats with multiple bedrooms and shared kitchen and living spaces, which characterise accommodation in halls of residence generally provided by universities and colleges. Due to this combination of factors, I consider that the proposal would not be characteristic of class C2 accommodation, which as set out in the UCO, covers residential institutions such as boarding schools and residential colleges.

15. My attention is drawn to student studio flat developments in other cities, one of which is described as sui generis. However, details of the planning cases for these developments are not before me and, as such, this evidence carries limited weight. Examples of other student accommodation in Norwich which have been considered sui generis for the purposes of the Community Infrastructure Levy are noted. However, these schemes differ from the proposed development in that one comprises predominantly cluster flats with

studio flats distributed among them, and another contains no studio flats. As such, these other developments have limited equivalence to the proposal before me.

16. The small size of the proposed studio flats, as assessed under living conditions below, would not, in my judgement, outweigh the combination of factors described above, which point towards C3 character.

17. Taking the above together, I conclude that the proposed development has sufficient characteristics of C3 accommodation for the affordable housing requirement of Policy JCS4 of the JCS to apply. The proposal does not make provision for affordable housing and, as such, conflicts with Policy JCS4 of the JCS and Policy DM33 of the DMP. Together the policies seek to ensure, amongst other things, that development makes appropriate provision for affordable housing.

Living conditions

18. Policy DM2 of the DMP requires that adequate internal space must be provided and would normally be expected to exceed the Council's indicative minimum guidelines for internal space standards. Whilst these standards do not specifically refer to studio flats, they indicate that at least 50sq.m minimum gross internal area (GIA) is reasonable for a one-bedroom single-storey dwelling for two people, with a shower room. The proposed studio flats, which would be available for double occupancy, range from approximately 33.5sq.m to 45sq.m GIA. As such, the smallest proposed units would be significantly smaller than appropriate for two people living in a one-bedroom dwelling.

19. The appellant considers that such space standards would not apply as the proposed accommodation does not fall within the C3 use class. However, as set out above I have found that the proposal has sufficient characteristics of C3 accommodation for Policy DM2 to apply in this respect.

20. The appellant's view is that the compact size of the proposed flats is justified, due to the transient nature of student accommodation. However, it is feasible that non-students could live in the proposed development, for the reasons described above. Even if students were the majority of tenants, year-round availability of occupancy is proposed. Therefore, it is quite possible that the proposed development would be the sole or primary residence of tenants, year-round. This would result in living and storage space requirements of a more settled type of occupancy, in line with the indicative minimum guidelines for internal space standards. Accordingly, the proposed studio flats would not provide sufficient internal space for future occupants.

21. In respect of outlook for future occupants, the Council has concerns regarding a number of the proposed units. One of unit No.3's windows would be partially limited by the plant room. Nevertheless, No.3's two windows would provide a reasonable degree of outlook over the open outdoor area to the rear of the block. Unit Nos.8, 13 and 17, situated above No.3, would also have a reasonable degree of outlook over the open outdoor area. However, the two bedrooms of ground-floor unit No.5 would look out onto a close-boarded fence approximately 1.5m away. As such, the outlook from these rooms within dwelling unit No.5 would be unacceptably compromised. Taking the above together, I find that, overall, the proposal would have a minor adverse effect, due to outlook of future occupants of unit No.5.

22. Regarding light, the Council is concerned that the adjacent Shoemaker Court building would overshadow, and limit receivable light to, unit Nos.3, 8, 13 and 17. However, unit No.17's third-floor location, higher than the adjacent building, would allow reasonable light into it. Moreover, given their north-easterly orientation, the rear windows of unit Nos. 3, 8 and 13 would receive morning sunlight and broadly similar levels of daylight to units at the rear of the adjacent block. Therefore, I find that the proposal would not result in significant harm to future occupants of the proposed development, in respect of receivable light.

23. Turning to the matter of outdoor amenity space, it is proposed that the development would share the provision which is situated to the rear of the existing Shoemaker Court complex. This comprises an area of synthetic turf, picnic table with seating and awning, and a substantial two-tier cycle storage facility. An additional table with seating is proposed, which would increase outdoor seating capacity to that for approximately 16 people. The appellant indicates that the outdoor amenity space, at the rear of the Shoemaker Court complex is underused. During my site visit, I saw the space being used by staff, and that it had some spare capacity for use by tenants, albeit this was a 'snapshot' in time. Moreover, the adjacent Twenty Acre Wood POS would provide occupants with opportunities for outdoor recreation, such as woodland walks, and some seating.

24. The above factors together lead me to find that the POS and proposed enhanced outdoor amenity space would together be sufficient, subject to ongoing access for occupants of the proposed development to the adjacent Shoemaker Court complex. However, the POS alone would not meet future occupants' outdoor space needs, and, given that future access to the adjacent student accommodation complex is not assured, it is not certain that access to outdoor amenity space would be sufficient.

25. Policy DM12(f) of the DMP requires that for proposals for 10 or more dwellings, at least 10% of those dwellings will be built to Lifetime Homes standard, or equivalent. The appellant considers that the proposed units are for students and not for permanent residential dwellings/occupancy, and as such the policy does not apply. However, the proposed accommodation has sufficient characteristics of 'dwellinghouses' for the policy to be engaged. The proposal does not include the required number of dwellings built to Lifetime Homes standard, or equivalent. Therefore, it would not provide accommodation of sufficient adaptability to cater for changing needs of future occupants at different stages of life.

26. In conclusion, in respect of future occupants, the proposal would not provide sufficient internal living space and demonstrably certain access to sufficient outdoor amenity space. Moreover, the proposal would have a minor adverse effect in terms of outlook of one of the units. It would not provide sufficient adaptable accommodation. The absence of harm in respect of receivable light would not outweigh the combined harm to living conditions of future occupants, as identified above. As such, the proposal would conflict with Policies DM2, DM12 and DM13 of the DMP, which together seek to ensure that development safeguards the living conditions of residents.

Flood risk

27. In response to concern about the risk of the proposal increasing flooding downstream, the appellant has provided a Surface Water Drainage Statement, undertaken by C&T Consultancy Ltd. This contains an assessment of the existing soakaway capacity which was installed to serve the adjacent Shoemaker Court complex. It indicates that a 32cu.m attenuation tank on the adjacent site has sufficient spare capacity to support the additional surface water loadings for the proposed development. However, given that a 24cu.m attenuation tank discharging to the public sewer was approved under Condition No.6 of the planning permission for the adjacent development[1], a CCTV or similar survey would be necessary to verify the capacity of the tank, and determine whether this would be sufficient. Moreover, there is not evidence before me of a proposed discharge rate acceptable to Anglian Water.

28. Therefore, it is not guaranteed that the proposed drainage approach would be practicable or effective. As such, is not something which could be conditioned as it would not be capable of enforcement.

29. To conclude, the proposal would not demonstrably avoid increasing flooding downstream. As such, it would conflict with Policy DM5 of the DMP, which seeks to ensure that development minimises the risk of flooding. It would also broadly conflict with Standing Advice 2 of the Norfolk County Council Lead Local Flood Authority Guidance Document Version 4 (2019), which seeks to ensure that sustainable drainage measures are satisfactorily demonstrated prior to granting planning permission.

Refuse provision

30. It is proposed that the appeal development would share the refuse bin storage and collection facilities which are located on the adjacent Shoemaker Court complex. The latter facilities comprise six 1100 litre non-recyclable waste bins and four 1100 litre recyclable waste bins. Assessed against Policy DM31 of the DMP, approximately two more 1100 litre bins for recyclable waste would be required. It is proposed to accommodate the additional bins on the adjacent Shoemaker Court site in the vicinity of the existing bins and, from what I saw on my site visit, this would be possible.

31. However, given that future access to the adjacent Shoemaker Court complex site is not assured, access to the proposed refuse storage and collection facilities is similarly not guaranteed and as such is not something that could be conditioned as it would not be enforceable.

32. Consequently, it has not been demonstrated that the proposal would have access to adequate refuse storage and collection facilities during the lifetime of the development. As such, it would conflict with Policy DM31 of the DMP, which, amongst other things, seeks to ensure that development makes adequate provision for refuse storage and collection.

Other Matters

33. The information supplied by the appellant to the appeal has addressed the Council's concerns in relation to trees, subject to the imposition of a suitable condition were the appeal to be allowed. It is therefore not necessary for me to take this matter further.

[1] Ref: 15/00663/F.

Planning Balance and Conclusion

34. I have had regard to the benefits arising from the proposal. The provision of 18 extra dwellings would add to the supply of housing in the city. It would also provide increased choice of residential accommodation, including for students with a preference for studio flats. The proposed development would result in economic benefit to the local area during and after construction, including custom for businesses in the EWC. Given the scale of proposed development, the benefits would be substantial. However, these benefits would not outweigh the significant harm identified.

35. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

William Cooper

INSPECTOR