
Appeal Decision

Site visit made on 7 October 2019

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 28 October 2019

Appeal Ref: APP/T2215/W/19/3223790

**Car Park to rear of Two Brewers Public House, 33 Lowfield Street,
Dartford, Kent DA1 1EW**

- 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 Urban Enhance Ltd against the decision of Dartford Borough Council.
 - The application Ref DA/18/00800/FUL, dated 21 June 2018, was refused by notice dated 13 September 2018.
 - The development proposed is the erection of a 6 storey building comprising of retail units, bin and cycle store on ground floor and 23 x 1 bedroom apartments on 1st, 2nd, 3rd, 4th and 5th floors with communal terrace at fifth floor level.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Background

3. Planning permission (Ref 07/00825/FUL) was granted at this site for a similar scheme. An application to amend that approval was submitted in 2008 under reference 08/1497/FUL which the Council resolved to grant, subject to a S106 Agreement. The Agreement was not completed until 2012 and planning permission was issued in March 2012. In the meantime, the Council had adopted its Core Strategy in 2011.

Main Issues

4. The main issues in this appeal are;
 - The standard of residential accommodation proposed
 - The effects of the proposal in relation to flooding
 - Whether the proposal would prejudice the proper planning of the area
 - The effects of the proposal in relation to its design

- The effects of the proposal in relation to vehicle and cycle parking/storage and highways safety
- Whether suitable provision is made for affordable housing.

Reasons

The standard of residential accommodation proposed

5. Policy DP8 of the Dartford Development Policies Plan 2017 (DDPP) states that new residential accommodation should meet the nationally described space standards, unless clearly shown to be unnecessary or unviable. The "*Technical housing standards – nationally described space standards*" was published by the DCLG in March 2015.
6. The Council considers that a number of the proposed units should be considered as 2 person flats as the bedroom in those flats meet the minimum space standard for 2 persons. Following from that, the Council then conclude that the total size of the flats are then inadequate for 2 people. The Council makes reference to the minimum size of a bedroom for 2 people as being 10.5 sqm but the Standards indicates this as 11.5 sqm. I assume that this is a typographic error by the Council and not an error in their assessment as those flats referred to by them appear to exceed this. Furthermore, it does not appear that the appellant has challenged this aspect of the Council's case, although they contend that the flats are of a suitable size.
7. It seems clear to me from my assessment of the Standards that the size of a flat in terms of how many people it could accommodate is a factor of the bed-spaces. That being the case, many of the flats proposed in the appeal scheme are 2 person flats but do not provide the minimum overall space suitable for 2 people. In this respect I consider that the proposal fails to provide a suitable standard of residential accommodation, contrary to Policy DP8.
8. In relation to amenity space, the flats would be provided with balconies and there is a communal roof-top space. The Council is critical of the design of the communal space and states that the adjacent flats within the scheme would need 'defensible' space. In this respect, I consider that a condition could require a landscaping scheme which could achieve this and so see no fundamental problem in this respect.
9. With regard to outlook, the appellant points out that the scheme is very similar to that granted in 2012 and the proposal would have the same effects, which were considered to be acceptable. The Council refer, amongst other things, to a scheme granted on the adjacent site within the rear of the Two Brewers Public House site for a 5 storey building containing flats, approved in May 2015 (Ref DA/14/00615) From consideration of the submitted documents, it appears that development of the appeal site was acknowledged in some form when the other site was granted permission. In this respect, I consider that it would be normal and acceptable for residential developments to face each other across a road and in this respect the proposed distances are not unacceptable. In other respects, whilst I acknowledge that the area is mostly commercial in character, this was taken into account in the determination of the previous scheme and little has changed since which alters such an assessment.
10. With regard to noise, the appellant has submitted a noise assessment which concludes that, with suitable measures, an acceptable residential environment

could be provided. The Council are critical of providing flats with mechanical ventilation which would rely on closed windows to keep noise at an acceptable level. My judgement is that in such an urban location, where there is no objection to the principle of residential development, this would not prevent an otherwise acceptable scheme from being realised.

The effects of the proposal in relation to flooding

11. The proposed redevelopment of the site was the subject of comments from the Environment Agency (EA) in relation to flooding. The Council's relevant reason for refusal states that the proposal does not demonstrate that the proposal would not increase the risk of flooding off-site.
12. Following the refusal of the application the appellant sought the further advice from the EA in relation to the Flood Risk Assessment (FRA) and an amended FRA. EA makes it clear in its most recent correspondence that since the original planning permission was granted at the site, its modelling and climate change allowances have been updated. In relation to the inclusion of voids as a means to accommodate flood-water, EA states that they should only be used as a last resort due to problems with silting-up, grilles becoming blocked and harbouring of rats, foxes or other fauna. They also state that EA would not recommend voids to be part of this development. They affirm that they continue to object to the proposal due to the failure of the FRA to demonstrate that the development does not increase flood risk off-site. There has evidently been some discussions between the appellant and EA in relation to this scheme. It is not for me to act as a conduit for these discussions but, from what I have before me, it appears that as of August 2019, EA still objected to the scheme. I cannot facilitate discussions between the appellant and EA and it is a general premise that the appeal should be determined on the basis of the scheme that was determined by the Council and the appeal should not be used as a means to negotiate an alternative scheme. On this basis, I shall determine the appeal on the basis of the information before the Council at the time of its decision and also based on the continued opposition to the scheme by EA. Therefore, I consider that the proposal is contrary to Policy CS24 of the Core Strategy and Policy DP2 of the DDPP.

Whether the proposal would prejudice the proper planning of the area

13. The Council have indicated that, since the previous planning proposal was considered by them, there have been a number of potential developments which seek to bring improvements to the Town Centre. Reference is made to some of these and I was able to see the relevant locations at my site visit.
14. It seems to me that the proposal would have no direct effects on the deliverability of the sites referred to by the Council or set out in the SPD. Reference is made to the possibility of an expansion to the adjacent shopping centre; however, I have not been provided with any details of a scheme or any certainty of such a proposal coming forwards and so I can give little weight to this. The Council have also raised the possible effects of placing a sensitive use (residential) in a commercial area and the possibility of this having a negative effect on the commercial uses. For the reasons set out previously, I consider that, on balance, the commercial activity would not prejudice residential occupiers, taking account of its urban location.

15. The proposed retail use would not be within the retail frontages of the adjacent roads but, taking account of other retail uses to the west, I see no prejudicial effects in this respect. With regard to accessibility to customers, this is as previously granted by the Council and I find no material change in circumstances since then.

The effects of the proposal in relation to its design

16. The proposal would be visible from the south, from Instone Road and the road approaching the site. From here it would be seen against the backdrop of the taller multi-storey car park and adjacent to the rising ramp. Notwithstanding the fact that the proposal would be 1 storey taller than the approved scheme at the rear of the Two Brewers Public House, I consider that its size and form would be acceptable in this location.
17. In relation to its more detailed design, the Council are critical of the degree of interest in the north, east and west elevations and the proposed materials. The proposed retail use would provide visual interest on the front (south) elevations and on part of the east elevation. Whilst some of this ground floor would be obscured by a ramp, I do not consider that this would result in an uninviting or poor building. The other elevations are not so exposed, particularly at the ground floor and in my judgement do not need an inviting face where they are adjacent to the service area to the rear and the ramps in other locations. The upper floors contain windows and do not present poorly designed elevations, in my view.
18. In relation to the materials, the Council considers these to be unacceptable and not consistent with the quality that they require for this location. If this had been the only objection, I am satisfied that suitable materials could be required by a condition and see nothing overriding in relation to this matter. In relation to pedestrian accessibility, it seems to me that pedestrians could access the site and routes are currently available and used. Based on what I have seen of the immediate area and from what has been submitted, there would appear to be sufficient scope for providing access to the building which is safe and convenient.

The effects of the proposal in relation to vehicle and cycle parking/storage and highways safety

19. The proposal does not contain any provision for car parking and does provide for cycle storage. The Council considers that car parking should be provided for the residents.
20. The appellant's analysis of the local population indicates that there are significant numbers of households and individuals that do not own a car and/or do not rely on a car to travel to work. From my observations it appears to me that the appeal site is within a location where there is good access to public transport and the area offers good access to employment and other services. It appears to me that a flexible approach should be adopted to any normal car parking requirements whereby the individual location of a site should be taken into account. In addition, the proposed 1 bedroom flats would be unlikely to accommodate families where the need/desire for a car may be expected to be greater.

21. It seems to me that the appeal site is in a location where development could be provided and no car parking provision is made, for the reasons set out above. The proposed cycle provision falls short of the Council's standards but I consider that suitable provision could be ensured by a condition, perhaps including 2 tier cycle storage. I have taken account of the Council's doubts over the suitability of such provision but consider that this is insufficient to object to the scheme on this basis. I also note that the Council has permitted a number of other car-free schemes in the area, in acknowledgement of some of the issues set out above. Furthermore, I note that servicing of the adjacent Two Brewers site was proposed from the adjacent service area or road; as the proposal indicates a similar arrangement, I find no reasons to object to it.

Whether suitable provision is made for affordable housing

22. The appeal submissions include a Unilateral Undertaking which would oblige the developer to provide not less than 30% of residential units as affordable and that they would be provided as intermediate and social rented in accordance with Policy CS19. The Council are concerned that the precise number of units is not specified, the tenure split is not specified and that no evidence that a Registered Social Landlord would be prepared to purchase the units has been provided.
23. In relation to the last point, I do not consider it absolutely necessary that a developer should identify a Registered Social Landlord at this stage. Although the submitted Undertaking does not state a precise number of units and it does not state the exact tenure split, its provisions do comply with the wording of Policy CS19 and so I do not find fault with it. However, I am mindful that the appeal is to be dismissed for other reasons and so it occurs to me that if any greater precision were to be required, these could have been sought if the scheme were to have been granted.

Conclusions

24. I have taken careful account of all other matters raised in the representations, including the details of the planning history of this site and the inclusion of the site within the Council's SHLAA. I have agreed with the appellant in relation to a number of issues but, importantly, the scheme fails to provide for a suitable standard of residential accommodation due to the size of a number of the flats, contrary to Policy DP8 of the DDPP. In addition, the appellant has not satisfactorily demonstrated that the proposal is acceptable in relation to flood risk. Taking account of all other matters, I find nothing of sufficient weight to overcome that harm. Therefore, the appeal is dismissed.

S T Wood

INSPECTOR