



Appeal Decision

Site visit made on 19 September 2019

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th October 2019

Appeal Ref: APP/Z5060/W/19/3232844

3 Riverside Cottages, Alfred Way, Barking IG11 0AY

- 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 Sukh Sandhu against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 19/00247/FUL, dated 7 February 2019, was refused by notice dated 3 June 2019.
 - The development proposed is described as a 'Full application for the remodelling and extension of 6 No x 3 bed terraces houses, to create 12 self-contained apartments'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council has included a policy from the Draft London Plan within their decision notice. In accordance with paragraph 48 of the National Planning Policy Framework (the Framework), weight may be given to policies within emerging plans. The weight given is determined by the stage of preparation of the emerging plan subject to the extent of unresolved objections and the degree of consistency of the relevant policies to the Framework. I have not been provided with any substantive details, in this regard, therefore, I can only afford limited weight to this emerging policy.
3. The first reason for refusal on the Council's decision notice refers to Policy 2.1 of the London Plan (2016)¹ (the LP). It has been brought to my attention that this is a typographical error and it should refer to Policy 2.17 of the LP. I have dealt with the appeal on this basis.

Main Issues

4. The main issues are:
 - the effect of the proposal on the local economy, with particular regard to the integrity and effectiveness of the Strategic Industrial Location;
 - whether satisfactory living conditions would be provided for future occupiers of the proposed development, with particular regard to air quality, noise and external amenity space;

¹ The London Plan - The Spatial Development Strategy for London Consolidated With Alterations Since 2011

- whether the proposal would incorporate appropriate measures for carbon reduction; and
- whether the proposal meets the housing needs of the area.

Reasons

Strategy for Strategic Industrial Locations

5. The appeal site is located within a Strategic Industrial Location (SIL), as identified by Policy CE3 of the London Borough of Barking and Dagenham Core Strategy (2010) (the CS). Policy CE3 of the CS explains that the Council will safeguard, promote and manage SILs and land within these locations will not be released for other purposes.
6. Policy 2.17 of the LP supports SILs as London's main reservoirs of industrial and related capacity, including general and light industrial uses, logistics, waste management and environmental industries (such as renewable energy generation), utilities, wholesale markets and some transport functions. Part C of Policy 2.17 of the LP states development proposals within or adjacent to SILs should not compromise the integrity or effectiveness of these locations in accommodating industrial type activities.
7. The supporting text to Policy 2.17 of the LP explains that SILs are given strategic protection because their scale and relatively homogenous character means they can accommodate activities which elsewhere might raise tensions with other land uses. Furthermore, it explains that development in SILs for non-industrial or related uses should be resisted other than as part of a strategically co-ordinated process of consolidation, or where it addresses a need for accommodation for SMEs or new emerging industries, or where it provides local, small scale, 'walk to' services for industrial occupiers (workplace crèches for example), or office space ancillary to industrial use. Policing and other community safety infrastructure may also be appropriate uses in these locations.
8. Whilst I accept that there is an existing residential use at the site, the proposed intensification of the existing use would increase the number of residents living within the SIL, which could raise tensions with industrial type land uses and result in unreasonable restrictions being placed upon existing businesses. Consequently, I consider that the proposal would compromise the integrity and effectiveness of the SIL in accommodating industrial type activities.
9. For the collective reasons outlined above, I conclude that the proposal would conflict with the Council's strategy for development within Strategic Industrial Locations. Therefore, the proposal would not accord with Policy CE3 of the CS and Policy 2.17 of the LP.
10. In addition to the above, the proposal would conflict with the objectives of paragraph 182 of the Framework, which states planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities; and that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.
11. The appellant states that each of the existing residential dwellings could be converted into a house of multiple occupation (HMO) using permitted

development rights. If these works were undertaken, up to 36 people could reside at the site (6 persons per HMO). The appellant argues that this would be far higher than the likely number of occupants who would reside at the proposed flatted development and thus the intensity of the proposed residential use within the SIL would be less under the current proposal, than when compared to the fallback position.

12. However, I have seen nothing to suggest that the appellant would genuinely pursue this option if the appeal failed or that such a scheme would be similar to, or materially worse than, what is currently proposed. Based on the proposed floor plans, and having regard to the Government's technical housing standards – nationally described space standard, I see no reason why the proposed flatted development could not be occupied by 36 or more persons. As such, the appellant's fallback position is a matter of negligible weight in the overall planning balance.

Living conditions of future occupiers

13. The proposal provides private external amenity space for the future occupiers of the ground floor flats to the rear of the building. The future occupiers of the upper floor flats would have access to two areas of communal external amenity space, which would be located to the rear and north east of the building, respectively.
14. In addition to the above, the appellant states that future occupiers of the upper floor flats would have the ability to use the landscaped areas to the front of the ground floor flats, if this were deemed to be necessary. However, no additional information has been provided by the appellant to demonstrate how this arrangement would be achieved on-site.
15. The Council express concern that the proposal does not provide any private external amenity space for the upper floor flats. In addition, concerns have been cited over the quality and usability of the external amenity space, which the Council state would be exposed to unacceptable levels of noise and poor air quality.
16. In respect of this main issue, the second reason for refusal on the Council's decision notice refers to Policy CM1 of the CS and Policy 7.1 of the LP. However, these policies relate to the Council's overarching general principles for development and the delivery of lifetime neighbourhoods within London, respectively. As such, I consider that they are not relevant to this main issue and I have dealt with the appeal on this basis.
17. Policy BP5 of the London Borough of Barking and Dagenham Borough Wide Development Plan Document (2011) (the DPD) sets out quantitative and qualitative standards, which should be achieved by new residential development in respect of the provision of private and communal external amenity space. In respect of the 'qualitative standards', amongst other things, the policy states that amenity space for all new dwellings should be: private, useable, functional and safe.
18. Neither of the main parties have put forward a calculation in respect of the quantitative amount of external amenity space to be provided as part of the proposal. However, based on the proposed site plan, I am satisfied that the

future occupiers of the upper floor flats would have access to a reasonably size communal amenity space, as required by Policy BP5 of the DPD.

19. Notwithstanding the above, for the reasons set out below, in respect of air quality and noise levels, I conclude that the external amenity space would be neither useable or functional and therefore the proposal would fail to provide satisfactory living conditions for future occupiers. Consequently, the proposal would not accord with the qualitative standards for external amenity space as set out within Policy BP5 of the DPD. In addition, the proposal would not accord with Policy CP3 of the CS and Policy 3.5 of the LP, which, amongst other things, require buildings and spaces to be functional and housing developments to be of the highest quality internally, externally and in relation to their context.
20. In respect of air quality, the Council state that the proposed development would expose additional people to unacceptable levels of air pollution associated with road traffic using the A13. The harmful exposure would occur predominately within the external amenity areas provided by the development. This assessment is based on air quality mapping data, which indicates that the level of nitrogen oxide exceeds 40 micrograms per cubic meter of air at the appeal site.
21. Policy 7.14 of the LP states that development proposals should minimise increased exposure to existing poor air quality and make provision to address local problems of air quality (particularly within Air Quality Management Areas (AQMAs) and where development is likely to be used by large numbers of those particularly vulnerable to poor air quality, such as children or older people).
22. Policy BR14 of the DPD states that permission will only be granted where mitigation measures are introduced which bring the levels of air pollution to an acceptable level.
23. Whilst the poor air quality at the appeal site is not disputed by the appellant, they argue that the proposal would not be occupied by a large number of people, nor would future occupiers be significantly exposed to poor air quality.
24. The proposed development would provide twelve self-contained flats and therefore it is reasonable to conclude that a large number of people would reside at the site. Given that a mix of unit types is proposed, future occupiers may include children and older people who are particularly vulnerable to the adverse effects of poor air quality.
25. No substantive evidence has been put forward to demonstrate how the adverse effects of poor air quality upon the living conditions of the future occupiers would be mitigated as part of the proposed development. Indeed, the appellant's statement acknowledges that it would be difficult to introduce measures that would have a significant impact on improvements to air quality. Consequently, I conclude that the proposal would fail to provide satisfactory living conditions for future occupiers due to the poor air quality at the appeal site. As such, the proposal would not accord with Policy BR14 of the DPD and Policy 7.14 of the LP.
26. In terms of noise, the appellant has submitted a noise assessment, dated 11 April 2016, in support of the proposal. The noise assessment does not relate directly to the appeal proposal and instead focuses on the feasibility of a proposed development of 44 residential units.

27. The report concludes that the target internal noise levels for bedroom and living areas in accordance with internal ambient levels from the guidance in BS 8233:2014 can be achieved by using the correct glazing specification. Despite the age of the report and the differences between the appeal proposal and the proposal referred to within the noise assessment, the assessment's findings in respect of internal noise levels have not been disputed by the Council. Based on the evidence before me, I have no reason to disagree with the Council on this matter.
28. In terms of outdoor noise levels, the noise assessment explains that the baseline noise measurement position was taken towards the centre of the appeal site; this is approximately where the communal external amenity space to the north east of the building would be situated under the current proposal. The measured noise levels were 77 LAeq (day) and 75 LAeq (night). The appellant's noise assessment concludes that this would exceed the guideline for outside bedroom levels as set out within BS8233:2014.
29. The appellant contends that appropriate noise attenuation could be achieved by the removal of the timber boundary fence and its replacement with a 2.4 metre high solid brick wall, which would provide suitable acoustic protection without over dominating the frontage of the site. In addition, future occupiers would have access to the communal outdoor amenity area to the rear of the site, which would be away from road noise.
30. However, no substantive evidence has been put forward in respect of the design of the wall and the level of noise attenuation which could be achieved at the front of the site. In addition, no substantive evidence has been provided to demonstrate that the predicted noise levels from within the rear external communal amenity area would meet the guidelines for outside bedroom levels as set out within BS8233:2014.
31. Consequently, I conclude that the proposal would fail to provide satisfactory living conditions for future occupiers due to the unacceptable noise levels at the appeal site. As such, the proposal would not accord with Policy BR13 of the DPD and Policy 7.15 of the LP, which, amongst other things, seek to separate new noise sensitive development from major noise sources and, where this is not possible, to mitigate unacceptable noise impacts through the application of good acoustic design principles.

Carbon reduction

32. Policy 5.3 of the LP requires development to meet the highest standards of sustainable design and construction. Policy 5.2 of the LP sets a zero-carbon target for new residential development in London. Similarly, Policy CR1 of the CS requires all new development to meet high environmental building standards and encourages low and zero carbon development.
33. Policy 5.7 of the LP states that there is a presumption that all major and strategic development proposals will seek to reduce carbon dioxide emissions by at least 20 per cent through the use of on-site renewable energy, wherever feasible. Policy BR2 of the DPD states that all major and strategic developments must demonstrate in an energy assessment that heating, cooling and power systems have been selected to minimise carbon dioxide emissions.

34. The appellant contends that the proposal is not a major development, as it results in a net gain of six dwellings at the site and thus the aforementioned policies are not relevant to the proposal.
35. Whilst the supporting text to Policy BR2 does not define 'major and strategic developments', I note that Annexe 2 of the Framework explains that housing is a 'major development' when 10 or more homes are to be provided. In this instance, the total number of new dwellings to be provided exceeds 10. Therefore, in forming a reasonable view on this matter, I consider the proposal is a major development, as defined by the Framework. I have dealt with the appeal on this basis.
36. No substantive evidence has been put forward by the appellant to demonstrate how the proposal complies with the aforementioned policies. Alternatively, the appellant suggests that such details could be secured by a planning condition. However, the details of such a condition have not been provided by either of the main parties.
37. Given the extent of the information required to satisfy the policy requirements and the potential that the works to reduce carbon dioxide emissions could fundamentally alter the external appearance of the development and require the construction of supporting infrastructure, I consider that the imposition of such a condition would be unreasonable. Consequently, the proposal would not accord with Policy CR1 of the CS, Policy BR2 of the DPD and Policies 5.2, 5.3 and 5.7 of the LP, which collectively seek to deliver sustainable design and construction in respect of residential development.

Housing need

38. Policy CC1 of the CS requires a minimum of 40% family accommodation to be provided as part of all major housing developments within the Borough, which includes both affordable and open market housing. The policy defines 'major housing developments' as schemes with 10 units or more, whilst the term 'family accommodation' means three-bedroom units, four-bedroom units or larger units.
39. The supporting text to Policy CC1 of the CS explains that Barking and Dagenham is failing to provide a sufficient amount of new family housing. It identifies that the Borough has lost existing family accommodation through housing conversion, demolition and redevelopment schemes, which have often not replaced the lost family sized units. Consequently, the intention of the policy is to enable the Council to secure a much higher level of family accommodation than has been provided in recent years.
40. The proposed development provides a total of twelve units and therefore a minimum of 40% family accommodation should be provided as part of the proposal. The proposed housing mix would be four one-bed units, four two-bedroom units and four three-bedroom units. Consequently, the level of 'family accommodation', equates to about 33% of the overall housing mix, which would fall below the 40% policy requirement. As such, the proposal would not meet the housing needs of the area, as set out within Policy CC1 of the CS.

Other Matters

41. The proposal would safeguard the character and appearance of the area and result in the modernisation of the existing properties. Such benefits would not be significant enough to alter or outweigh my conclusions on the main issues.
42. Reference has been made to a recent flattened development in the locality known as 'Fresh Wharf'. The appellant contends that the proposal provides little external amenity space and is sited adjacent to a noisy arterial route. However, I am not aware of the particular circumstances in that case and in any event, the fact that apparently similar development has been granted permission is not a reason, on its own, to allow unacceptable development. I also note the comments with regard to the Council's handling of the planning application and pre application advice. However, I have considered this appeal proposal on its planning merits only and concluded that it would cause harm for the reasons set out above.
43. The appellant contends that in choosing to reside at the site, future occupiers would be aware of the site's constraints, which in turn would be reflected in the sale price of the properties. Even if this were the case, it is not a reason to allow unacceptable development.

Conclusion

44. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Christopher Miell
INSPECTOR