



Appeal Decision

Hearing held on 21 January 2020

Site visit made on 21 January 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th February 2020

Appeal Ref: APP/Z5630/W/19/3231378

The Barge Dock Site, Down Hall Road, Kingston Upon Thames KT1 1PS

- 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 Keyway Estates Limited against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref: 18/12421/FUL, dated 11 May 2018, was refused by notice dated 29 April 2019.
 - The development proposed is the erection of a traditional boathouse style building incorporating nine residential apartments and encompassing the existing plant room, over the Barge Dock.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Environment Agency (EA) submitted an appeal statement in the time period leading up to the date of the hearing. In the interests of fairness, the appellant was given the opportunity to comment on the statement at the hearing. Both the statement and the appellant's verbal response contained matters that are relevant to my decision, and so I have taken them into account.
3. After the hearing, the appellant submitted what is said to be a completed version of the Unilateral Undertaking (UU). This provides for a financial contribution of £100,000 towards affordable housing, the granting of a boat mooring licence to the River Thames Boat Project and prevents future occupiers of the proposal making an application for a parking permit to the Council. The appellant also submitted a letter which concerned an existing Section 106 Agreement on the site. The Council was given the opportunity to comment on these documents.

Main Issues

4. The main issues are a) whether the proposal would constitute inappropriate development in the Metropolitan Open Land (MOL) for the purposes of the development plan policy and the National Planning Policy Framework (Framework), b) the effect on flood risk, c) the effect on housing mix, d) sustainable drainage considerations, e) density considerations and the efficient use of land, and f) if it is inappropriate development, whether the harm by

reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

5. The appeal site is located on the eastern bank of the River Thames. It extends from the riverbank to a quay over a body of water that leads into the main course of the river. It provides mooring facilities for a boat known as the Thames Venturer. It also contains a building which is used as a plant room. The bank side boundary is defined by steel palisade fencing. The site was formerly part of a demolished power station and was used for the transfer of coal from barges. It previously contained an office building that spanned the dock.
6. To the north of the site is the unenclosed entrance to Canbury Gardens. This forms a pleasant area of grassed open space, with pathways and a line of mature trees alongside the riverbank. The river path extends down past the landward side of the site, beyond which is a large modern development of apartments. To the south of the site is a car park and a railway bridge. The town centre shops and services are also found a short distance from the site. There are a number of houseboats that are moored along this stretch of the river.

Inappropriate Development

7. The site is within the MOL. Policy 7.17 of the London Plan 2016 (LP) gives the same level of protection to the MOL as the Green Belt, including from inappropriate development. Policy CS3 of the Council's Local Development Framework Core Strategy (2012) (CS) seeks to protect the open space network from inappropriate development through its open space designations, including the MOL. Policy DM5 of the CS seeks to limit stated detrimental impacts on the MOL, in accordance with national guidance.
8. Paragraph 145 of the Framework states that the construction of new buildings is inappropriate in the Green Belt unless, amongst other exceptions, it involves limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would, under the first limb of this exception, not have a greater impact on the openness of the Green Belt than the existing development.
9. There is no dispute that the site constitutes previously developed land. In relation to the impact on openness, and whilst there is not a definition of what can be deemed to be the 'existing development' under the exception, this logically constitutes what is currently on the site. The site itself is largely open, apart from the building which is fairly discretely located at one end of the site. The boundary fencing is also not entirely solid, due to its form and permits visibility of the open attributes of the site. The site also contributes towards the openness of the MOL due to its proximity to the Canbury Gardens.
10. The proposal would alter the area of land on which it would be situated by erecting what would be a considerably larger building than what is existing on the site. It would abridge the dock, and extend across and cover the site above ground level. Whilst the ground level itself would be more open, there

would be 2 storeys of accommodation directly above it. The overall height would also be greater than the existing building.

11. In respect of the visual aspects, the proposal would clearly be visible from the adjacent riverside path and Canbury Gardens. There would be limited adjacent screening that would appreciably reduce visibility. Taking these factors together, it would have a greater impact on the openness than the existing development.
12. The appellant considers that an extant permission¹ on the site for a restaurant is of relevance in respect of matters of openness. However, it falls for the proposal itself to be considered against the Framework and development plan policy by way of whether it constitutes inappropriate development, rather than by comparing it to an alternative. The permission for the restaurant is considered later in my decision.
13. The second limb to this exception concerns development that would contribute to meeting an identified affordable housing need. The proposed apartments would not constitute affordable housing. In addition, the exception is not so broad that the provision of a commuted sum for affordable housing would enable the proposal to be deemed not inappropriate development, with the strong level of protection that is afforded to the MOL. As a consequence, I do not have reason to consider the remainder of this limb of the exception as it does not apply.
14. The proposal would not meet either limb of this exception and so it would constitute inappropriate development in the MOL. Paragraph 143 of the Framework establishes that inappropriate development is by definition harmful. Accordingly, it would not comply in this regard with the Framework, Policy 7.17 of the LP, and Policies CS3 and DM5 of the CS.

Flood Risk

15. There is a dispute between the main parties over whether or not the site lies in Flood Zone 3b, the functional flood plain or in Flood Zone 3a, where there is a high probability of flooding. The Planning Practice Guidance – Flood Risk and Coastal Change (PPG) explains that the functional floodplain is the area where water is stored or flows in times of flood. The flood level is to be determined in the 1 in 20 return period or the 5% annual exceedance probability.
16. To this end, the appellant's modelling work contained within the submitted flood risk assessment (FRA) states that this level is 5.98 metres (m) above ordnance datum (AOD) and that the topographical survey shows the quayside on the site to be higher, at 6.2m AOD. The FRA, therefore, finds that as the flood level would not reach the quayside, the site is not functional flood plain and so falls within Flood Zone 3a.
17. The EA and the Council reach a different conclusion from the appellant, based on flood modelling, and point to that the site is defined as Flood Zone 3b under the Council's Strategic Flood Risk Assessment Level 1 and 2 (2011) (SFRA).
18. The built form of the proposal would extend over the body of the water between the bank and the quayside. As this leads directly to the river, in times of flood, it would be likely to be an area where water is stored or flows. When

¹ Council refs: 5/12214/FUL, 15/12466/FUL

this occurs, whether or not the flood level would reach the quayside level is less determinative in deciding what flood zone the site lies. At least part of the site where the proposal would be located, namely that over the body of water, lies within Flood Zone 3b.

19. Figure 9 from the SFRA indicates that a significant proportion of the site lies in Zone 3b. The SFRA states that land within the site, whilst in Flood Zone 3b, should be treated as Flood Zone 3a for planning purposes as there is no direct flow path between the site and the river. It is not, though, apparent this envisages built development encroaching over the body of water within the site or that it is concerning itself with the type of development that is proposed. Nor does the ground level of the proposal above the body of water, or the other mitigation measures proposed, define what flood zone the site lies in.
20. The permission for the restaurant on the site predates much of the evidence before me on flood risk, as well as the PPG. Thus, it does not change my views. Similarly, as regards the appeal decision at Surrey House² that I have been referred to, the Inspector did not identify flood risk as a main issue, which is not the case with the appeal before me.
21. I fully acknowledge the experience of the occupiers of the nearby houseboats, and their useful contributions on flood risk at the hearing. However, such evidence does not enable me to deviate from my views on what flood zone the site lies within, when considering the totality of the evidence before me.
22. The Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). To achieve this, the Framework requires a sequential test to be carried out, with the aim to steer new development to areas with the lowest risk of flooding. It states that the SFRA will provide the basis for applying this test.
23. The site is subject to an allocation under Policy 17 (17c) of the Kingston Town Centre Area Action Plan (2008) (AAP) for improvements to the Barge Dock, including moorings and storage facilities, visual appearance and boundary treatment. Although the Framework states that where planning applications come forward on sites allocated in the development plan through the sequential test, applicants need not apply the sequential test again, the proposal is for a different use from that which has been allocated. In addition, as the SFRA was published after the AAP, it would not have been used to apply the sequential test when the appeal site was allocated.
24. The information that I have to apply the sequential test for the proposal is of a limited nature. The appellant has referred to the Council's housing land supply position but this does not, in itself, demonstrate that it is not possible for development to be located in zones with a lower risk of flooding. There is insufficient evidence before me to demonstrate that the sequential test has been passed.
25. Even if the sequential test was deemed to be passed, as the proposal would constitute a more vulnerable development under the PPG's Flood Risk Vulnerability Classification, it should not be permitted as it would be in Flood Zone 3b. As a consequence, the exception test would not need to be

² Appeal ref: APP/Z5630/W/19/3223667

considered as it would not change that the proposal would be unacceptable in flood risk terms. As a consequence, I do not have to consider the wider sustainability benefits under the exception test and, similarly, nor do I have to consider whether the proposal would be safe for its lifetime, including flood mitigation and evacuation plan measures.

26. I conclude that the proposal would have an unacceptable effect on flood risk. As such, it would not comply in this regard with Policies CS1, CS2, KT1, DM3 and DM4 of the CS, Policy 5.12 of the LP and Policy K24 of the AAP which, collectively, seek to manage flood risk, including from the impacts of climate change. It would also not accord with the Framework on planning and flood risk for the reasons that I have set out, by way of directing development away from areas at highest risk.

Housing Mix

27. Of the 9 proposed apartments, 3 would be 1-bedroom and 6 would be 2-bedroom. Three of the 2-bedroom apartments are said to be 4 person, which the appellant considers would be suitable for families. The Council are concerned that with the accommodation provided, families would not be adequately catered for as part of the housing mix.
28. Policy DM13 of the CS states that proposals would be expected to provide a minimum of 30% of dwellings as 3 or more bedroom units. As none of the apartments would contain 3 bedrooms or more, the proposal would not comply with this part of the policy.
29. Policy DM13 is qualified in that it allows for this level of provision for larger units not to be met where it can be robustly demonstrated that this would be unsuitable or viable. The appellant has cited the Council's housing targets, the town centre and accessible location of the site, and that it is previously developed land. I am not persuaded these justify not providing 3 or more bedroom units because it would lead to an undue skewing of accommodation towards units with a low number of bedrooms in such locations. The needs of families would not be satisfactorily provided for and an adequate mix of units would not result.
30. In addition, the use of 2 bedroom apartments for families would be restricted to small families and if there were 2 children, such an arrangement would only be likely for a temporary period until the children would reasonably need separate bedrooms. I acknowledge that the particular characteristics of the site are that private garden space could not obviously be provided. Nevertheless, families would benefit from the very close proximity of Canbury Gardens. There is also no certainty that future occupiers would be downsizing to enable family accommodation to be freed up elsewhere.
31. I conclude that the proposal would have an unacceptable effect on housing mix. Thereby, it would not comply in this regard with Policies CS10 and DM13 of the CS and Policy 3.8 of the LP where they concern incorporating a mix of unit sizes and types, meeting a range of housing needs and offering a range of housing choices.

Sustainable Drainage

32. The proposed means of drainage would comprise an attenuation tank in the form of a crated system. Water would be stored prior to being released into

the river at a controlled rate. The mechanism would also provide for cleansing of the water.

33. Policies DM4 of the CS and 5.13 of the LP both promote the use of sustainable drainage systems (SuDS). The use of attenuation is listed in the hierarchy set out in Policy 5.13, but is not one of the techniques listed under Policy DM4. In the case of the latter, this is caveated by way of where it can be demonstrated that such measures are not feasible.
34. The Council has raised particular concerns that a green roof has not been incorporated. The appellant considers that such a roof would be impractical with the design of the proposal. This does seek to follow that of a traditional boathouse and, based on what I observed in the area, this involves fairly steep pitched roof slopes with limited opportunities for a crown roof arrangement or similar, in particular in smaller buildings. Given that an appropriate design is necessary in such a context, incorporating a green roof would not be likely to be feasible.
35. I conclude that the proposal would not be unacceptable as regards sustainable drainage considerations. It would comply in this regard with Policies CS1, CS2, KT1, DM3 and DM4 of the CS, Policy 5.13 of the LP and Policy K24 of the AAP where they seek to promote the use of sustainable drainage systems, including SuDS where appropriate. It would accord with paragraph 163 of the Framework, as far as this concerns SuDS.

Density

36. There is broad agreement between the main parties concerning the density of the proposal as regards habitable rooms and dwellings per hectare. With regard to the density matrix that is set out in Table 3.2 of the LP, the site falls most readily within an urban setting. This is based on its location on the northern fringes of the town centre and with the variety of uses in its vicinity, including those which are more open in their nature.
37. As a result, the proposal would accord with the density ranges that are set out in Table 3.2. However, even if I was to consider the site fell within a central setting, the supporting text to the policy makes it clear that the density ranges in any event are not to be applied mechanistically.
38. The Council has referred to that the internal space would be greater than the standards which are set out in Table 3.3 of the LP. These standards operate as a minimum and their exceedance does not equate to an over provision in this case, in particular as this would work out to be on average less than 9 square m per apartment.
39. In relation to the effect this would have on affordable housing provision, it is simply the case that the number of units proposed is below the threshold where such provision is required. An alternative scheme with a different distribution of space is not before me. I have to base my decision on the merits of the proposal and the density range would not be unacceptable.
40. I conclude that the proposal would not be unacceptable concerning density considerations and the efficient use of land. It would comply in this regard with Policies 3.4 and 3.9 of the LP and Policies CS10 and DM15 of the CS as far as they concern optimising housing output for different types of locations within the relevant density ranges and affordable housing, amongst other

considerations. It would also accord with paragraph 123 of the Framework where it says that decisions are to avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site.

Other Considerations

41. The extant permission for the restaurant on the site represents a fallback. The Statement of Common Ground confirms this is agreed between the main parties, notwithstanding the matters that the Council raised at the hearing concerning its implementation by way of compliance with a related Section 106 Agreement. In the event there is a dispute over the Section 106 Agreement, this is a matter for the main parties. The effect on the openness of the MOL would be similar under the proposal and the restaurant permission. However, the proposal raises the particular concerns that I have set out as regards flood risk and housing mix. These set the proposal apart from the restaurant permission. Taking these factors together, the fallback position carries moderate weight in my decision.
42. The Council cannot demonstrate a 5 year housing land supply of deliverable sites in accordance with the Framework. The supply is 2.7 years, and so the shortfall is significant. The proposal would make a fairly modest contribution to addressing this shortfall with the number of additional units that would result. It is also intended it would provide affordable housing by way of the financial contribution as per the UU, albeit this would be an unusual approach for the delivery of such housing as the Council are not signatories. As I have set out, the proposal would be accessible to local services and make use of previously developed land. These matters also attract moderate weight in my decision.
43. The site lies in the Riverside North Conservation Area. The significance of the conservation area is derived from the relationship of the buildings and open space areas to the river. The Barge Dock site makes a contribution in terms of its functional connection to the river. The building on the site, though, has a somewhat utilitarian appearance and has been the subject of graffiti. The palisade fencing is not an attractive feature.
44. The boathouse design of the proposal would contribute more favourably to the significance of the conservation area and would maintain key features of the site, such as the open water and the mooring. It would preserve or enhance the character or appearance of the conservation area, and be of benefit in design terms. This also carries moderate weight in my decision. The appeal decision in Bromley³ that I have been referred to in this respect does not inform my deliberations any further, as the weight to be given to such matters will depend on the particular site circumstances and the proposal.
45. The Thames Venturer is a vessel operated by the River Thames Boat Project, a charity which offers therapeutic cruises and educational activities on the river. The proposal would provide for its continued mooring, through the UU. From the evidence that I have before me, and based on what was said at the hearing, the mooring would not seem to be under any particular threat if the proposal did not go ahead. Hence, this carries limited weight. The same applies as regards the security of the occupiers of the nearby houseboats. Whilst I was informed at the hearing of an unsavoury incident and I am not

³ Appeal Ref: APP/G5180/W/18/3206569

unsympathetic in this regard, there is not the evidence that suggests that other measures have been fully investigated by the appropriate authorities.

46. The allocation of the site under Policy 17 (17c) of the AAP does not favour the proposal because it does not allocate the site for housing. The Riverside Public Realm Supplementary Planning Document (2018) does not alter the allocation and provides guidance if a building is proposed, rather than promoting building on the site.
47. Both main parties have referred to policies contained within the Draft London Plan. I have dealt with matters in relation to housing land supply above and whilst I am aware of the proposed increase in the Council's housing target, this does not alter my position. As the plan is not adopted, this could be the subject of amendments. The draft policies in other respects do not significantly change the approach from the adopted LP in relation to the issues before me, and so they do not have a significant bearing on my decision.
48. The presumption in favour of sustainable development, as is set out in the Framework, does not apply because the application of policies in the Framework that protect areas or assets of particular importance, related to areas at risk of flooding or coastal change, provides a clear reason for refusing the development proposed.
49. Whilst I am aware that the Council expressed some concerns at the hearing over whether the UU would meet the tests set out under the Community Infrastructure Levy Regulations (as amended, 2019), as I am dismissing the appeal on other grounds, I have not considered this matter further.

Conclusion

50. The proposal would be inappropriate development in the MOL. Paragraph 144 of the Framework establishes that substantial weight should be given to any such harm. In addition, it would have an unacceptable effect on flood risk and housing mix. The other considerations which arise do not clearly outweigh the totality of the harm. Consequently, very special circumstances do not exist. I conclude, therefore, that the appeal should be dismissed.

Darren Hendley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Spenser-Morris	Keyway Estates Limited
Charles Chamberlain	Keyway Estates Limited
Philip Villars	WSP Indigo
Ben Frodsham	WSP Indigo
Chris Howe	Brookes Architects
Jeff Horner	GH Bullard & Associates LLP

FOR THE LOCAL PLANNING AUTHORITY:

Barry Lomax	Head of Development Management
Harsha Bhundia	Senior Planning Officer

INTERESTED PARTIES:

Mary Graham	Local Resident
Jan Mahon	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement of Common Ground between the Council and the Appellant signed 21 January 2020
- 2 Schedule of Conditions
- 3 Policy P17 of the AAP
- 4 Draft Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 relating to The Barge Dock, Down Hall Road, Kingston upon Thames
- 5 Agreement under Section 106 of the Town and Country Planning Act 1990 in relation to the Barge Dock, Down Hall Road, Kingston upon Thames dated 21 December 2012

DOCUMENT SUBMITTED AFTER THE HEARING

- 1 Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 relating to The Barge Dock, Down Hall Road, Kingston upon Thames
- 2 Letter from Fladgate LLP dated 27 January 2020