
Appeal Decisions

Site visit made on 12 February 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2020

Appeal A Appeal Ref: APP/N4720/W/19/3241341

Tetley Hall, Burton Crescent, Headingley, Leeds LS6 4DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Miles Pickard, Pickard Properties Limited against the decision of Leeds City Council.
 - The application Ref: 19/04749/FU, dated 30 July 2019, was refused by notice dated 29 October 2019.
 - The application sought planning permission for the redevelopment of former halls of residence site comprising 4 storey residential care home, 3 blocks of 54 flats, 2 blocks of 14 townhouses, conversion of stables to detached house, with landscaping and public open space without complying with a condition attached to planning permission Ref: 11/03234/FU, dated 2 August 2012.
 - The condition in dispute is No: 2 which states that: The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Appeal B Appeal Ref: APP/N4720/W/19/3241342

Tetley Hall, Burton Crescent, Headingley, Leeds LS6 4DN

- 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 Miles Pickard, Pickard Properties Limited against the decision of Leeds City Council.
 - The application Ref: 18/07548/FU, dated 4 December 2018, was refused by notice dated 20 August 2019.
 - The development proposed was originally described as the "construction of Block K for residential development and demolition of Tetley Hall building and Heathfield Cottage (11-13 Heathfield Terrace)."
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Decisions

1. Appeal A is dismissed and Appeal B is dismissed.

Applications for Costs

2. Applications for costs were made by both main parties against one another. These applications are the subject of separate Decisions.

Procedural Matters

Appeal A

3. Planning permission 11/03234/FU (the original planning permission) granted approval for 3 blocks of 54 flats as part of the overall permitted development. The proposal that is the subject of this appeal, submitted under section 73 (S73) of the Town and Country Planning Act 1990 (the Act) would change and reduce the number of flats in the description by way of the proposed amendments to Block I.
4. The Council refused the planning application subject of this appeal, in part, on the grounds that the proposal represented a fundamental alteration to the proposal put forward under the original planning permission. The proposal was considered to result in a development that was substantially different to the development originally approved. As such, the Council considered the proposal fell outside the scope of the S73 process.
5. Subsequent to the Council's decision, the *Finney* judgment¹ was issued which concerned the grant of planning permission for development under S73 that was not covered by the description of the development in the body of the original planning permission. *Finney* held that an application under S73 may not be used to obtain a varied planning permission when the change sought would require a variation to the terms of the "operative" part of the permission (i.e. the description of the development for which planning permission had been granted). It must not, therefore, consider the description of the development to which the conditions are attached. Both main parties have provided evidence concerning *Finney* in their submissions.
6. The appellant then submitted during the appeal an application to the Council under Section 96A of the Act in order to alter the description of development on the original planning application to reflect the proposal as a non-material amendment application (the NMA application). At the time of writing, that application remains undetermined. Therefore, the description of development remains as per the original planning permission.
7. The appellant requested that if I was not minded to approve Appeal A on the basis of the alternative approaches that were set out in the appellant's final comments, that substantive reasons and clear guidance on the justification be provided. It is the purpose of the appeal decision to provide this function and there is not scope for the parties to be given an indication of the decision, prior to it been formally issued. Nevertheless, the appellant has been made aware of my preliminary views on the implications of *Finney* and was given the option of withdrawing the appeal, in the interests of fairness.

Appeal B

8. The description in the banner heading above is taken from the planning application form. During the course of the application, amended plans were submitted and the main parties agreed a revised description, namely the "demolition of Tetley Hall building and Heathfield Cottage (11-13 Heathfield Terrace) and construction of 17 apartments (block K)". Accordingly, I have considered this appeal on this basis.
9. Subsequent to the refusal of Appeal B, the Council has adopted the Core Strategy (as amended by the Core Strategy Selective Review) (2019) (CS),

¹¹ John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868

which I have considered in my decision. The main parties have both made reference to the adopted version of the CS, as amended, in their submissions.

10. The appellant's alternative approaches set out in the final comments also considered that the proposal subject of Appeal B should be considered separately. I concur as it was submitted as a separate appeal and is distinct from the proposals subject of Appeal A. This is reflected in my decision.

Appeals A and B

11. During the course of the appeal, the Appellant submitted planning obligations by deed of undertaking under Section 106 of the Town and Country Planning Act 1990 (UU) for both appeals. The Council was given the opportunity to comment on these documents.
12. The appellant considered that the Council's comments on the UUs should not have been accepted. The concerns that the Council expressed as far as they inform my decision are, however, similar to those that it has made previously through its appeal submissions. Hence, there is no possible prejudice. The same applies as regards the concerns that the Council raised that the appellant had introduced new evidence at the final comments stage.

Main Issues

13. The main issues are:
- (i) whether or not the proposal would require a variation in the description of development as is set out in the original planning permission (Appeal A only);
 - (ii) whether or not the proposal makes adequate provision for any additional need arising for affordable housing (Appeal B only);
 - (iii) whether or not the proposal makes adequate provision for any additional need arising for sustainable travel planning measures (Appeal B only); and
 - (iv) the effect on highway safety by way of the proposed car parking provision (Appeal B only).

Reasons

Background

14. The appeal site comprises a former student halls of residence site. The original planning permission was granted in 2012 for the redevelopment of the site for residential use. This was described as the "redevelopment of former halls of residence site comprising 4 storey residential care home, 3 blocks of 54 flats, 2 blocks of 14 townhouses, conversion of stables to detached house, with landscaping and public open space."
15. Two terraced rows of townhouses have been constructed, which are Blocks H1 and H2, albeit not in accordance with the approved plans and these are part of the proposals subject of Appeal A. A block of flats has also been constructed, as have access roads, footpaths and hard and soft landscaping. The large Tetley Hall Building is still in situ, as is Heathfield Cottage. Both these buildings would be demolished, under the proposals subject of Appeal B.
16. The immediate surroundings to the site are largely residential. The Headingley centre is found a short distance from the site which contains a wide range of

shops and services. There are also bus routes regularly serving the city centre and other destinations. The site also lies in the Far Headingley Conservation Area.

Variation in the Description of Development (Appeal A)

17. S73 allows for an application to be made to a Council to develop land without compliance with conditions previously attached. S73(2) makes it clear that the Council, and therefore by extension the Inspector, "shall consider only the question of the conditions subject to which planning permission should be granted".
18. Under the *Finney* judgment, it is evident that S73 cannot be used where the change would require the description of development on the original planning permission to be altered. The proposal subject of the S73 application must not result in what would be an incorrect description of development. Nor is there scope to alter that description.
19. The proposal, if approved, would result in the description of development being incorrect by way of the alteration in the number of flats in Block I. The operative part of the original planning permission would require variation, which is not permitted when considering an application made under S73, following *Finney*.
20. The appellant has stated that there is no case directly on the point as to whether a reduction would be a technical inconsistency with the description. In plain terms, though, the proposal would clearly result in an inconsistency because it would be at odds with the number of flats approved under the original planning permission and would not lie within the parameters that it sets. S73 only permits the same development, as set out in the description on the original planning permission, subject to different conditions. The proposal would not constitute the same development with the change in the number of flats.
21. The appellant has also cited the *Arrowcroft* judgment² as regards whether or not the proposal would represent a fundamental alteration compared to the original planning permission. As *Finney* is the most recent judgment on this matter, though, it forms the basis of my deliberations. As such, the *Arrowcroft* judgment has a limited bearing on my decision.
22. The fallback position concerning the original planning permission does not alter my conclusion because this is not of relevance in deciding on what is essentially a procedural issue. For the same reason, this also applies as regards the changed internal arrangement within Block I related to the Council's space standards policy requirements.
23. Nor do I consider there is scope for Block I to be removed from the proposal for my consideration in order to reflect the description of development on the original planning permission. This would represent a significant change from the proposal that was the subject of the Council's decision and was subject to consultation as the appeal would, as a consequence, only concern Blocks H1 and H2. It would not accord with the *Wheatcroft*³ Principles as the proposal would be so changed that to grant it would deprive those who should have

² R v Coventry City Council ex parte Arrowcroft Group Plc [2001]

³ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

been consulted on the changed proposal of the opportunity of such consultation. The limited representations that were made to the planning application do not change my views because of the extent of the amendment that would result.

24. Whilst the *Finney* judgment has been issued since the Council's decision, this does not place the appellant at a particular procedural disadvantage or justify accepting an amendment as an exceptional circumstance. A fresh planning application can simply be submitted to the Council. In such a situation, this course of action would represent the appropriate procedural remedy.
25. In taking these considerations together, I conclude that the proposal would require a variation in the description of development as is set out in the original planning permission. It cannot, therefore, be considered any further and so it is not necessary to consider the matters that are set out in the remainder of the Council's reasons for refusal and the submitted UU.

Affordable Housing (Appeal B)

26. The planning obligation which is solely related to Block K includes a financial contribution of £261,425.59 for affordable housing. The appellant has stated a strong preference for a commuted sum because of the build to rent type of the proposed accommodation. The Council's position is ultimately that the provision should be on-site.
27. Policy H5 of the CS states that affordable housing provision should be on site, unless off site provision or a financial contribution can be robustly justified. It sets out 3 alternative ways that build to rent developments shall provide affordable housing. These include a commuted sum in lieu of on-site provision, as is proposed by the appellant. Policy ID2 of the CS supports the use of associated planning obligations to provide such necessary infrastructure and facilities.
28. It is not a matter of dispute between the main parties over the need for affordable housing provision to be made in some form. The supporting text to Policy H5 states that the Council's Strategic Housing Market Assessment (2017) identifies an annual need of 1230 affordable housing dwellings across Leeds. The site is located in a buoyant part of the city and there would be a likely strong demand for affordable housing, as part of the overall need for such housing across the city.
29. I am mindful that on-site affordable housing was seen as a key benefit of the original planning permission and that the Council considers the site is an area where off-site delivery may prove difficult. Policy H5, however, permits a commuted sum approach for build to rent accommodation. Even though the National Planning Policy Framework (Framework) seeks for affordable housing to be on-site, this is qualified including where off-site provision or an appropriate financial contribution in lieu can be robustly justified. Policy H5 provides such a justification. The development plan is the primary basis for decision-making and Policy H5 is an up to date policy that was adopted after the publication of the most recent version of the Framework. It attracts significant weight in my decision.
30. That being said, as regards the proposed mechanism of delivery through the planning obligation in the UU, the Council are not signatories to it. This is even

though it seeks to place obligations on the Council as regards the receipt and use of the contribution. The Council are not legally required to accept it and has given a strong indication it is opposed to this method of dealing with affordable housing. As a consequence, the planning obligation would be unlikely to be effective to deliver the affordable housing in accordance with Policy H5. I am not unsympathetic as regards the apparent difficulties that the appellant has encountered in engaging the Council in the planning obligation, but this does not address that it is defective in this regard.

31. The appellant considers that the Inspector must assume that the UU is acceptable to the Council and that any decision must be taken on that basis, because the Council's comments on the UU should not be accepted. However, the Council also stated its concerns in dealing with affordable housing in this manner in its Appeal Statement, which I have also considered in my decision. Other matters raised by way of how the contribution is calculated and views on the dialogue which took place between the main parties have only a limited bearing in light of my conclusion on this issue.
32. I find that the need for the contribution that arises from the proposal under Policy H5 satisfies the tests that are set out in Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended, 2019) (CIL) and the Framework. However, as the planning obligation is defective it would not give the assurance that the affordable housing would be delivered. As a consequence, it carries limited weight in my decision.
33. I conclude that the proposal would not make adequate provision for any additional need arising for affordable housing and so it would not comply with Policy H5. It would also not comply with Policy ID2 as regards the use of planning obligations to provide necessary infrastructure and facilities. Nor would it accord with the Framework where it concerns the provision of affordable housing as part of the housing needed for different groups in the community.

Sustainable Travel Planning Measures (Appeal B)

34. The planning obligation also includes a financial contribution of £8,508.50 for sustainable travel planning measures. Again, that a contribution needs to be made is not in dispute. Policies T1, T2 and ID2 of the CS seek to encourage and incentivise more sustainable travel choices, related developer contributions, and the use of associated planning obligations. The Council's Travel Plans Supplementary Planning Document (2015) (Travel Plans SPD) provides related guidance, by way of travel planning measures.
35. The proposal would create a demand for travel and a related contribution would encourage the use of travel modes other than the car, in particular due to the location of the site and the good accessibility to services. It would also support the appellant's position over the proposed level of on-site car parking provision. Thus, the need for the contribution meets the CIL tests and those in the Framework.
36. The same concern arises as with the affordable housing, though, over delivery. As I have set out above, the Council are not legally required to accept the planning obligation and, based on the evidence before me, I am similarly not persuaded that the planning obligation would be effective. Hence, it also carries limited weight in this respect.

37. I conclude that the proposal would not make adequate provision for any additional need arising for sustainable travel measures and so it would not comply with Policies T1 and T2 in this regard, and with Policy ID2 as concerns planning obligations, as well as with the Travel Plans SPD. It would also not accord with the Framework where it promotes sustainable transport including through development proposals, opportunities to promote walking, cycling and public transport use.

Highway Safety (Appeal B)

38. The submitted plans indicate that a total of 24 car parking spaces would be available for the occupiers of Block K. These would be located in a parking court area and alongside access roads. The Council has contested whether all these would be genuinely available, without impacting on the provision for other residents on the site. The Council also point out that some of the provision would be outside of the red line site boundary, albeit this would still be within the overall site which the appellant is developing. The Council consider that it has been only demonstrated that 20 spaces would be available.

39. There is also a dispute between the main parties over what level of car parking provision should be provided. The Council is preparing a Transport Supplementary Planning Document (Transport SPD) that incorporates one of the methodologies from the Street Design Guide Supplementary Planning Document (2009) (Street Design Guide SPD). The Council consider that, based on the Transport SPD, 26 to 29 spaces should be provided.

40. On the basis that 26 spaces would meet the recommendations of the Transport SPD, the shortfall at worst would be 6 spaces. The site is a highly accessible location as regards the local services in Headingley centre and the public transport provision. This would encourage the future occupiers to use modes of transport other than the car. Under both the Street Design Guide SPD and the Transport SPD, it is apparent that car parking provision may be lowered or raised, dependant on local circumstances. This is a location that would lend itself to responsibly lowering the provision.

41. Some future occupiers would, in all likelihood, choose to own cars, as is evident from the existing residents on the broader site. However, there would still be a not insignificant level of car parking provided. Whilst it would be lower than what the Transport SPD envisages, it would not be substantially less so. As such, I am not persuaded that the proposal would unduly add to the levels of on-street car parking in the area, even if car ownership is high in Far Headingley and with the restrictions which apply through permit zones.

42. The guidance that I have been referred to which advises on-street parking can lead to road and pedestrian safety problems also needs to be considered in the context of the site circumstances. As I have set out above, the site is in a location which encourages the use of modes of transport other than the car and the level of car parking provision would not be unreasonable. The proposal would not be likely to cause untoward safety concerns in this respect.

43. I conclude that the proposal would not have an unacceptable effect on highway safety by way of the proposed car parking provision. It would comply with Policy T2 in this regard. It would also comply with Policy P10 of the CS and 'Saved' Policy GP5 of the Leeds Unitary Development Plan (Review 2006) where these policies state that car parking should be designed in a positive

manner and be integral to the development, and that development proposals should resolve detailed planning considerations including access and seek to maximise highway safety.

44. Flexibility is inherent in car parking guidelines in the Street Design Guide SPD and the proposal would accord with this approach. The Transport SPD does not alter this position. It would also accord with the Framework in this regard because it would not result in an unacceptable impact on highway safety, or residual cumulative impacts on the road network that would be severe.

Other Matters (Appeal B)

45. The Far Headingley Conservation Area Appraisal & Management Plan (2008) (CAAMP) identifies that a key characteristic of the conservation area is the contrasting character between the tight-knit settlement form of the village core that retains the character of the early 19th century village, and the planned, regular form of the 19th century villas and terrace developments. This is much in evidence in the context of the site with the presence of both large villa residences and terraces. High levels of architectural detailing are also evident.
46. The proportions of the proposed apartment building would be sympathetic to these surroundings. The proposed external materials would also be in keeping, as would the detailing which reflects a number of typically 19th century features. Heathfield Cottage is not an unattractive building and it does make a pleasant contribution to the streetscene on Heathfield Terrace. Nevertheless, its loss needs to be considered in the round and this also includes the demolition of the unsympathetic Tetley Hall building.
47. Block K would be located in an important position as the site is approached from Moor Road and it would be an important focal point. The extent to which this would be diminished by some of the proposed car parking spaces would be limited by the planting that is indicated on the landscape proposals. In any event, cars would also be using this approach to access the proposal.
48. The CAAMP considers that new development, amongst other considerations, should be high quality well designed architecture that responds to its context in terms of urban and architectural design. The proposal would be in accordance with these intentions. It would preserve or enhance the character or appearance of the conservation area in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
49. The Council has raised housing mix in its appeal submissions due to a deviation from the targets that are set out in Policy H4 of the CS. These targets are expressed as "*preferred*" and the policy itself simply seeks an "*appropriate mix*". The overall development of the site would still provide a reasonable mix of dwellings as regards numbers of bedrooms.
50. Matters have also been raised by way of the effect of the proposed car parking provision on protected trees and the living conditions of residents. The evidence before me on these grounds is not, though, compelling and so they do not alter my deliberations.
51. The original planning permission as regards Block K does not justify the proposal as a fallback position because, based on the information before me, it would still provide for the affordable housing as part of the associated planning

obligation with that permission. This would not be the case with the proposal before me, for the reasons that I have set out.

Planning Balance (Appeal B)

52. The benefits which stem from the proposal relate to its contribution towards housing supply and that it would accord with the Government's objective, as is set out in the Framework, to significantly boost the supply of homes. It would also make use of previously developed land in a location which is accessible to local services which is also supported by the Framework. These matters attract moderate weight.
53. Whether or not the demolition of the Tetley Hall Building should be seen as a benefit needs to be considered in light of the effects on character and appearance overall. As I have set out above, the proposal also includes the demolition of the not unattractive Heathfield Cottage. Overall, I find these effects to be neutral. The same applies as regards that the proposal would not have an unacceptable effect on highway safety by way of the proposed car parking provision. These matters do not weigh either for or against the proposal.
54. Set against the benefits would be that adequate provision for affordable housing and sustainable travel planning measures would not be made. In these respects, the proposal would be in conflict with the development plan, as well as with the Framework and the Travel Plans SPD. The harm that would arise would be significant. The planning balance does not favour the proposal.

Conclusion

55. Under appeal A, the proposal would require a variation in the description of development as is set out in the original planning permission. S73 cannot be used to obtain a varied planning permission when the change sought would require a variation to the description of the development for which the original planning permission had been granted. As a consequence, appeal A fails and is dismissed.
56. As regards appeal B, I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, appeal B should also be dismissed.

Darren Hendley

INSPECTOR