The Planning Inspectorate

Appeal Decisions

Site visit made on 24 August 2020 and 15 September 2020

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Appeal A Ref: APP/B5480/W/19/3243668
120 Balgores Lane, Romford RM2 5JU

- 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 Troy Homes against the decision of the Council of the London Borough of Havering.
- The application Ref P0910.19, dated 4 June 2019, was refused by notice dated 2 August 2019.
- The development proposed is TV apparatus on development previously approved under P1439.15.

Appeal B Ref: APP/B5480/W/19/3243821
120 Balgores Lane, Romford RM2 5JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Troy Homes against the decision of the Council of the London Borough of Havering.
- The application Ref Q0141.19, dated 4 June 2019, sought approval of details pursuant to condition No 18 of a planning permission Ref P1439.15, granted on 8 September 2016.
- The application was refused by notice dated 22 August 2019.
- The development proposed is redevelopment of 110 and 120 Balgores Lane comprising demolition of all existing buildings with construction of a new build 2.5 storey 14 unit residential scheme with associated parking and landscaping.
- The details for which approval is sought are: A renewable energy system for the development shall be installed in accordance with details previously submitted to and agreed in writing by the Local Planning Authority and shall be made operational prior to the first occupation of the development and retained permanently thereafter.

Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed and approval of the reserved matter is refused, namely: details of the renewable energy system submitted in pursuance of condition 18 attached to planning permission Ref P1439.15, granted on 8 September 2016.

Procedural matter

Appeal B

3. It is stated that the wording of condition 18 is imprecise and vague and so fails the relevant tests for conditions contained in national planning policy[1]. However, this is not a matter for me to determine in the context of an appeal made under section 78(1)(b) of the Town and Country Planning Act 1990. It is open to the appellant to apply for planning permission to carry out development without complying with condition 18 of the permission for the flats. This would application determined under section 73 of the Act. Any such application would be unaffected by my determination of this appeal.

Main Issues

Appeal A

4. The main issue in Appeal A is the effect of the proposed development on the character and appearance of Gidea Park Conservation Area.

Appeal B

5. Having regard to the information on the Council's decision notice, and that a renewable energy system has been installed, the main issues in this appeal are:

- whether sufficient information has been provided regarding the renewable energy system to comply with the development plan; and,
- the effect of the renewable energy system on the character and appearance of Gidea Park Conservation Area.

Reasons

Appeal A – TV apparatus

6. The National Planning Policy Framework ('the Framework') is an important material consideration. It identifies that heritage assets are an irreplaceable resource. Paragraph 193 advises that when considering the impact of a proposed development on the significance of a designated heritage asset, such as a Conservation Area, great weight should be given to the asset's conservation.

Conservation Area

7. The appeal site is located within Gidea Park Conservation Area. In the exercising of planning functions the statutory test in relation to Conservation Areas is that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Policies DC61, DC64 and DC68 of the Havering Core Strategy and Development Control Policies Development Plan Document (CS&DCP) (adopted in 2008) require the protection of the character and appearance of a locality, including conservation areas, through high quality design that respects local design features. Whilst these policies predate the adoption of the Framework, they are largely consistent with it. In accordance with paragraph 213 of the Framework, I therefore attach significant weight to these policies.

8. In terms of assessing the significance of the Conservation Area and the contribution that the appeal site makes to it, I have taken into account the Gidea Park Conservation Area Character Appraisal and Management Proposals , the comments of the main parties and my observations during the site visit.

[1] Paragraph 55 of the National Planning Policy Framework ('the Framework'). Circular 11/95 referred to by the appellant has been replaced by the Framework and Planning Policy Guidance.

9. The Conservation Area covers a suburban area which that contains well designed houses from the early part of the twentieth century. The northern part of the Conservation Area has a considerable number of spaciously set properties built by different architects from around 1910 onwards. In the southern part of the Conservation Area, where the appeal property is located, there are fewer such houses, plots are smaller and there is a greater variety of eras of buildings. Nevertheless, the residential built environment is still of high quality. Well-proportioned dwellings with hipped roofs, gables, tall chimneys and mature landscaping predominate and the use of brickwork, rough cast render and plain clay tiles on roofs is widespread. The significance of the Conservation Area is therefore architectural and historical.

10. No 120 is a recently completed development of three apartment buildings on the corner of Balgores Lane and Woodfield Drive. Its form, architectural details and the palette of external materials used means that the buildings are well designed and complement the character and appearance of the Conservation Area. A condition attached to the permission for the development removed permitted development rights for TV apparatus in the interests of amenity and to protect the character and appearance of the Conservation Area. This condition is consistent with an Article 4 direction that requires planning permission for the installation of such equipment, in addition to other forms of development, on properties within the Conservation Area.

11. I saw that approximately half of the houses along Balgores Lane in sight of the appeal property and within the Conservation Area have TV aerials on the roof. However, very few have satellite dishes. I have also taken into account the satellite dishes and TV aerials on properties referred to by the appellant. In relation to satellite dishes, they are too few in number within the Conservation Area to have changed its character and appearance to the extent that they form part of its character. Moreover, in comparison to the complicated TV aerials present on the roofs of the buildings at No 120, which I describe below, the TV aerials I saw, and have been referred to, have only a horizontal element and so are a simpler less obtrusive design.

12. The elevational drawings show a satellite dish fixed to the inside face of one of the chimneys on each building. However, the plan view of the scheme, which reflects what I saw has been erected, shows the location of the equipment between the two chimneys on each building. The TV apparatus that has been erected is mounted on a free standing pole. Each pole has a satellite dish at its base followed by an aerial consisting of a circular element and at the top of the pole a horizontal element. In views from the street the height of the apparatus appears to be similar to that of the chimneys. On the basis that the appellant has confirmed that the TV apparatus has already been erected, I have therefore assessed the appeal on the basis of the plan view and what I have seen erected on the buildings, rather than what is shown on the submitted elevational drawings.

13. The Council's supplementary planning document 'Heritage' (SPD) states that satellite dishes and telecommunications equipment should not be sited to the front of properties or be visible from the street scene.

14. On the two end apartment buildings, as the TV apparatus is located towards the front edge of the flat crown roof, the apparatus is clearly visible from street level on Balgores Lane and Woodfield Drive. Owing to the viewing angle and the position of the equipment forward of the chimneys, in views from the street

the equipment appears taller than the chimneys and is more prominent than it otherwise would be. Although on the central building the apparatus is set further back in the middle of the crown roof, and so does not appear as tall in relation to the chimneys, as the apparatus is located at the point at which the building turns the corner of the site it is a prominent feature within the streetscene. The resulting visual clutter of the apparatus on the roof of each building is contrary to the SPD and demonstrably detracts from the skylines of the buildings and causes moderate harm to the character and appearance of the Conservation Area as a whole.

Planning balance

15. The harm caused by the development to the significance of the Conservation Area as a whole, is less than substantial. In such circumstances, paragraph 196 of the Framework advises that the harm that is caused should be weighed against its public benefits.

16. In accordance with the statutory duty described, I attach considerable importance and weight to the moderate harm that has been caused to the Conservation Area. On the other side of the balance, it is stated that the TV apparatus allows residents to watch terrestrial TV without subscribing to a paid for service. Given though that a satellite dish, which is a large feature of the TV apparatus and the visual clutter caused, is not required to access free to view TV channels, and that a free service would only benefit the residents of the development rather than the public at large, I attach limited weight to this consideration as a public benefit of the scheme.

17. Taking all these matters into account, I find that the public benefit of the proposal falls a long way short of outweighing the harm that has been caused to Gidea Park Conservation Area. The development therefore is contrary to a policy of the Framework that provides a clear reason for refusing the development proposed, as well as failing the statutory test. As such it is contrary to section 16 of the Framework, in addition to being contrary to policies DC61, DC64 and DC68 of the CS&DCP and the SPD.

18. It is stated that the TV apparatus has been installed in the locations chosen because they are the only places that can achieve an adequate signal. However, many dwellings in the area do not have TV apparatus in such prominent locations on their roofs. In the absence of substantive supporting evidence therefore, I am not persuaded that it has been demonstrated that an adequate signal can only be achieved in the locations used. As a result, this consideration is not of sufficient weight to outweigh the harm that I have identified to the character an appearance of the Conservation Area and the conflict that has occurred with the development plan.

Appeal B - Renewable Energy System

19. Condition 18 requires that a renewable energy system for the development is agreed with the local planning authority and installed. The reason for the condition explains that it was attached, in part, because insufficient information had been provided to comply with policy 5.2 of the London Plan.

20. Consistent with paragraph 151 of the Framework policy 5.2 helps increase the use and supply of renewable and low carbon energy. It does this by requiring that major development proposals, such as the flatted development at 120 Balgores Lane, meet a testing target for carbon dioxide emission reductions above that set by Building Regulations. Demonstrating compliance involves the

submission of a detailed energy assessment with proposals for how the necessary reductions can be achieved in compliance with the following hierarchy: less energy use; supplying energy efficiently; and, the use of renewable energy. The Council's supplementary planning document 'Sustainable Design and Construction' (SD&C SPD) contains similar but less onerous targets.

21. Where the use of renewable energy is needed, but cannot be met on-site, policy 5.2 advises that off-site provision may be used or a ring fenced cash in lieu contribution made to the local planning authority to secure carbon dioxide savings elsewhere.

22. Policy DC50 of the Havering Core Strategy and Development Control Policies Development Plan Document (CS&DCP) is also cited in the reason given for condition 18. This policy predates policy 5.2 and the current London Plan but is broadly consistent with it. It supports facilities for renewable energy providing, amongst other matters, that their design is not detrimental to the character of the surrounding area and there is no demonstrable harm to visual amenity.

23. The appellant states that the reduction in carbon dioxide emission target for the scheme is 35% below that required by the Building Regulations 2013 Target Emission Rate. This has not been challenged by the Council.

24. The documents submitted at application stage identified that only a small part of the carbon dioxide emission reduction required could be achieved by improving the fabric of the building. The bulk they advise would be achieved by the inclusion of an air source heat pump in each flat with the provision of photovoltaic panels only on the flat roof of the southern-most block. Together these measures would push the carbon dioxide reduction past the 35% target to 37%. The Sustainability Statement for the scheme confirms that these features in principle would allow the scheme to comply with the development plan, that they would be embedded into the design from the outset and that they would be followed through.

25. The appellant has gone ahead though and installed a renewable energy system that is very different to that envisaged at application stage and has done so without first gaining the agreement of the Local Planning Authority in writing. No air source heat pumps form part of the renewable energy scheme that has been installed. Instead the system consists entirely of photovoltaic panels. As a result, rather than the photovoltaic panels being limited to the flat roof of the southern-most block as stated in the documents submitted at application stage, or limited to the flat roofs of all three buildings as indicated by the roof plan that was submitted at that point, they cover the flat roof on every block and have been incorporated into one or more flank roof slopes of each building, as well as into the front roof slopes of Blocks B and C.

26. In addition, I saw a series of thin white poles, approximately 1 metre tall, on each of the flat roofs. These poles though are not shown on the plans submitted as part of the application to discharge the condition and they are not referred to by the appellant. For the purposes of the appeal, I have therefore not treated them as part of the photovoltaic installation.

27. On the basis of the letter submitted at appeal stage, the installed system provides an improvement over the target emission rate of at least 35% and so complies with policy 5.2 of the London Plan and the SD&C SPD in this regard. Located though in a Conservation Area, and by virtue of policy DC50 and the

statutory test detailed in paragraph 7 above, the effect of the system on the character and appearance of the Conservation Area is also important.

28. A roof plan has been submitted as part of the application to discharge the condition which shows the location of all the photovoltaic panels that have been installed. However, there are no elevational drawings to show the profile of the photovoltaic panels on the flat roof of each building. Owing to their position towards the front of the flat roof, in public views from the adjacent roads these panels noticeably protrude above the roofline.

29. Although the photovoltaic panels within the front and flank roof slopes are level with the roof tiles, or slightly recessed, the elevational drawings in showing the panels as the same colour as the roof tiles underplay their prominence. The metal frames, square metal lattice and black infill of the panels disrupts the even appearance of the grey roof slopes and are a utilitarian feature that harms the appearance of the blocks in public views from the adjacent roads. The installed renewable energy system is therefore detrimental to the visual amenity and character of the Conservation Area described above in paragraph 9. As a result, it would be contrary to policy DC50 of the CS&DCP.

30. It has not been shown that the photovoltaic panels installed represents in public views the least obtrusive arrangement of panels that enables the development to comply with the carbon dioxide emission reduction required. Moreover, no substantive evidence has been submitted to support the assertions that air source heat pumps would be more obtrusive, that they would not now be unable to meet the bulk of the required carbon dioxide emission reduction target, or that they would be impractical. As a result, I do not find that if this appeal was dismissed the appellants would be left in a position where no other options are available to comply with the requirements of this condition.

31. In the absence of supporting technical evidence that demonstrated that the installed arrangement, which is quite different from the indicative details submitted at application stage, achieved the necessary carbon dioxide reductions the Council was quite right to find that insufficient information had been submitted as part of the application to allow it to discharge the condition. Whilst that omission has now been addressed, the installed scheme causes notable harm to the character and appearance of Gidea Park Conservation Area, contrary to policy DC50 of the CS&DCP. As a result, it is also contrary to the Council's supplementary planning document 'Heritage' which supports development that does not cause harm to heritage assets.

32. As the harm caused by the scheme to the significance of the Conservation Area as a whole is less than substantial, in accordance with paragraph 196 of the Framework, the harm that is caused should be weighed against its public benefits.

33. In accordance with the statutory duty described, I attach considerable importance and weight to the notable harm that has been caused to the Conservation Area. On the other side of the balance, the reduced carbon dioxide emissions and lower energy use, are public benefits of the renewable energy system to which I attach significant weight.

34. Taking all these matters into account, I find that the public benefits of the proposal fall short of outweighing the harm that has been caused to Gidea Park Conservation Area. The scheme therefore is contrary to a policy of the Framework that provides a clear reason for refusing approval of the scheme, as

well as failing the statutory test. In addition to being contrary to policy DC50 of the CS&DCP it is also contrary to policies CP17, CP18, DC61 and DC68 of the same document that require the protection of the character and appearance of a locality, including conservation areas, through high quality design. As a result, the installed renewable energy scheme is contrary to the development plan considered as a whole.

Conclusions – Appeals A & B

35. For the reasons given above, and having regard to all other matters raised, both appeals should therefore be dismissed.

Ian Radcliffe

Inspector