



Appeal Decision

Site visit made on 8 December 2020

by Stephen Wilkinson BA (Hons) BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 April 2021

Appeal Ref: APP/A1910/W/19/3242910

Plots 2 and 3 Kier Park, Maylands Avenue, Hemel Hempstead, HP2 4FQ

- 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 Kier Property against the decision of Dacorum Borough Council.
 - The application Ref 4/02286/18/MFA, dated 23 August 2018, was refused by notice dated 20 June 2019.
 - The development proposed is construction of 268 flats and 1404.5 square metres of office space split across six blocks, with associated car parking, landscaping and amenity space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development included in the application form refers to a covering letter submitted with the application. I have not been able to identify this and so have included in the banner heading the description used by the Council in the officer report to Committee. This has been used by the appellant on the appeal form. Accordingly, I have determined the appeal on this basis.
3. Given the size of the proposed development I reviewed the appeal proposal with regard to Regulation 5(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. On the basis of the evidence, the proposed development does not require an Environmental Impact Assessment.
4. Some of the original floor plans on which the Council made its decision omitted balconies despite them being shown on the elevations. I regard this as a technical error and I have accepted revised drawings designed to address this matter. I am satisfied that the Wheatcroft¹ principles have not been breached and that interested parties have not been prejudiced by my decision on this point.
5. The appeal was accompanied by a completed Unilateral Undertaking which I comment on later in this letter.

Main Issues

6. The effects of the proposal on:

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

- The character and appearance of the area
- The living conditions of future occupiers of the development,
- Whether the scheme represents overdevelopment of the site, and
- Whether there is sufficient parking or not to serve the proposed development.

Reasons

Character and appearance

7. The appeal site lies on the north western corner of the junction of Maylands Avenue with Breakspear Way/London Road (the A414) and forms part of the Maylands Business Park. This is an important location, being a gateway to Hemel Hempstead and indeed the whole Borough as one approaches from the M1 motorway. Development on the site could be visible from St Albans Road, Leverstock Green Road and Leverstock Green Way and from the M1.
8. The site forms part of the Borough's major regeneration area which is primarily focused on delivering new opportunities for employment. Adopted planning policy included in the Core Strategy 2013, with a range of guidance² supports the regeneration of the wider Maylands Gateway Area through securing Head Quarters buildings and complimentary employment led uses. Underpinning these policies and strategies is a requirement that new development should be high quality with individually designed buildings located in an open land setting.
9. Although the need for employment led regeneration underpins the Council's strategy for the area, it accepts that demand for employment space has declined since the early 2000s³. The proposed use of the site for residential purposes is not cited in the Council's refusal notice and accordingly I understand that the principle of residential use is acceptable to the Council on this site. Nevertheless, its adopted policies and guidance on seeking a landmark building or high quality development across the whole site remain adopted policy and underpins this main issue.
10. I acknowledge that the essential thrust of Policy 34 and adopted guidance was originally predicated on achieving high quality employment uses on this site. However, many of the principles which underpin the Council's guidance hold true for good design irrespective of the preferred land use.
11. The proposed scheme includes two development platforms divided by a short spine road leading from Maylands Avenue allowing access to parking areas serving each platform. Six main buildings, 3 in each development platform are included in the scheme. Building A at the southern end of the site, next to a Travel Lodge has been designed as the landmark building for the whole scheme although this would be complemented by building E at the northern edge of the site.
12. Building A is a pivotal element and would be set back from the road network by landscaping adjacent to the roundabout. At 13 storeys, it would be higher than the adjacent Travel Lodge and given its orientation and design would be distinguished from it.

² The Maylands Gateway Development Brief, Maylands Masterplan and the Business Park Design Strategy

³ Dacorum Employment Land Availability Assessment 2017

13. However, its extension into building C undermines its role and purpose as the 'gateway' building. In turn the continuous building line to Maylands Avenue in common with blocks F and E further diminishes its role. Similarly building E at 11 storeys fails to adequately 'bookend' the northern edge of the scheme and instead would compete with building A as the dominant component of the scheme given the rise in landform at this point. For these reasons the design of the scheme would fail to deliver a landmark building in line with Policies CS10 of the Core Strategy 2013 and Saved Policy 111 of the Local Plan 2004.
14. Although the proposed materials for buildings A and E differentiate them from the other blocks along the Maylands Avenue frontage this is insufficient to break from their uniformity, a feature which is reinforced through the continuous building line.
15. The sense of uniformity is further maintained through the 'industrial rhythm' of regular spacing of windows with recessed bricks or louvred infill panels. These provide only granular distinctions in the design of this façade where stronger design features are required to enliven the whole of this frontage.
16. This matter is compounded by the scheme's proposed location close to the back edge of the pedestrian footway. This adds to the perception of the scheme's dominance along this frontage which could have been addressed by a wider set back as suggested in the Council's guidance. This would have allowed the opportunity for a varied building line which in turn could have been enlivened by the introduction of structural planting. The glazed curtain walling with hanging gardens does not adequately address for the scheme's shortcomings in this regard.
17. The appellant states that the chamfered design of blocks C and F create the main gateway into the scheme via the spine road, designed as a shared surface for both vehicles and pedestrians. Despite its design, it is the primary vehicular access serving each parking area which lie beneath the podiums for each development platform. The spine road also serves surface level parking for the car club and commercial units. Given the competition for space between pedestrians and vehicles it is unlikely that this would adequately function as a 'plaza' as described by the appellants. For these reasons it would conflict with Policy CS12 which seeks, amongst other matters, to provide safe and satisfactory access for all users.
18. The scheme includes almost 100% site coverage with buildings B and D extending towards its western edge. This leaves only limited areas for incidental open space at ground level. These include an area adjacent to the entrance to building A and a strip of land on the site's western edge against building D. These areas are limited by both their size and configuration demonstrating the scheme's shortcoming against the requirements of adopted policy for development to be in an open land setting.
19. I recognise that the scheme has been through a series of iterations prompted by both officer comment and public consultation. However, at its heart the scheme fails to introduce a form of development required by policy which in turn can balance both the human scale with the need for a landmark development. Whilst the appellant states the appeal scheme would define its own sense of place, I do not consider that this has been achieved as policy requires in this instance.

20. For the above reasons, I consider that the overall design of the proposed scheme would not achieve the policy objectives which are supported by guidance and the masterplan for the area. I conclude, therefore on this main issue, that the proposed scheme would conflict with Policies CS10, CS12 and CS34 of the Core Strategy 2013 and Saved Policy 111 and those parts of the National Planning Policy Framework (the Framework) which seek to promote high quality buildings and places.

Living conditions of future occupiers

21. There are several aspects to the Council's concerns on this main issue.

Noise

22. Both parties accept that the flats along Maylands Avenue would experience noise disturbance generated by the high volumes of traffic from this road well in excess of noise levels recommended in guidance for external amenity spaces⁴. Although within flats there would be adequate sound insulation, disturbance would arise when the doors/windows facing the road would be opened to allow ventilation.
23. Whilst the size of each balcony means that they have limited utility as private amenity space, my primary concern on this matter is the degree of impact on living conditions in the summer months when the doors and windows facing Maylands Avenue are likely to be opened to allow adequate ventilation. This is critical, given the large number of flats along this frontage are single aspect. The living conditions of occupiers would be adversely impacted by the design.
24. I do not accept the appellant's suggestion that mechanical ventilation would suffice and windows would not require to be opened or that a condition could be used to secure the doors/windows in order to minimise the impacts of noise. This would undermine both the integrity of the scheme and the living conditions of its occupiers.
25. For the above reasons, I conclude on this issue that the proposal would conflict with Policy CS32 and Saved Appendix 3 of the Local Plan 2004 which identifies a requirement to adhere to appropriate standards for new residential development. These are consistent with Paragraph 180 of the National Planning Policy Framework (the Framework) which require new development to be appropriately located taking into account the likely effects of pollution on health.

Sunlight and Daylight

26. The BRE⁵ has published guidance on the appropriate levels of sunlight and daylight for new development. Of a sample of windows across the development, only 69% would meet the average daylight factor BRE target values and 83% would meet the BRE target values for daylight distribution. Whilst I understand that the majority of rooms that fail the standard would be bedrooms this is still a significant proportion of windows throughout the whole scheme and assumes greater importance given other shortcomings in the

⁴ Council statement and Letter from AECOM 23 April 2019

⁵ Building Research Establishment report – Site Layout Planning for Daylight and Sunlight – a guide to good practice 2nd edition 2011

scheme's design. These failings would be particularly significant for the studio flats.

27. Furthermore, the scheme's design results in a large number of single aspect units having a northerly aspect particularly in blocks B, D and F. Living rooms in these flats would have minimal amounts of sunlight during the summer months. This would adversely impact on the living conditions of occupiers.
28. I acknowledge the appellants comments⁶ that a flexible approach is necessary to the interpretation of these standards in order to make optimal use of land. The guidelines suggest circumstances when this is likely which include examples such as historic centres and areas with other high rise buildings which impose constraints for the integration of new schemes. However, neither of these typical scenarios are applicable in this case and the compromise on standards solely reflects the exigencies of this scheme's design.
29. For the above reasons, I conclude on this issue that the proposal would conflict with Policy CS12 which require new development to be of a good design including ensuring adequate levels of sunlight and daylight to rooms together with Saved Appendix 3 of the Local Plan 2004 which requires adherence to appropriate standards for new residential development. These policies are consistent with Paragraph 127 of the Framework which requires new development to enhance the quality of life and support health and wellbeing.

Amenity space

30. Amenity space is provided across the scheme through roof top terraces, balconies and public amenity space in 2 podium areas located above the car parking areas serving the scheme.
31. The main area of dispute between the parties relates to both the amount and quality of amenity space included in the balconies and in the podium areas. I regard the provision of amenity space as an important matter given that almost 50% of units are for family sized accommodation and the provision of amenity space promotes health and well being. Building A includes a roof terrace which I understand will not be available to serve the wider development, being the preserve of the top floor flats. There will be other private space for 2nd floor flats on the 2 podiums within the scheme.
32. The balconies/recessed spaces have only limited value as amenity space because of their small size. These problems are compounded in the case of balconies or the recessed space for flats along Maylands Road and on the north side of blocks B and D due to the impact of excessive levels of noise from traffic and a northerly aspect respectively.
33. Although the blocks have been designed to enable pedestrian access to the podium spaces they are of an insufficient size to meet the Council's adopted standards. These require that the footprint of built development is replicated in the provision of amenity space.⁷ The appeal scheme does not include how the space could be best used to cater for the different and competing needs of residents. This is critical given that several hundred people could be living across the whole appeal scheme.

⁶ Paragraph 4.3 in the Rebuttal Statement

⁷ Appendix 3 of the Dacorum Local Plan 2004

34. Whilst the frontage blocks shield the development from the noise generated by traffic using Maylands Road, the podium space located immediately below balconies and windows could result in noise generation from children involved in active play to the detriment of surrounding occupiers whose flats would overlook the space.
35. The appellants appear to recognise the limitations of this provision and as an alternative suggest that facilities located in 3 other locations in the wider area could suffice as alternative space. Of these only High Street Green, located to the north of the site would adequately satisfy the need for alternative open space being accessible without necessitating crossing major roads, although even this would be a long walk for parents with young children.
36. The other spaces identified by the appellant at Leverstock Village Green and Coppinsfield Sports ground can only be accessed across the dual carriageways of Maylands Avenue and Breakspear Road/London Road. These are barriers to access and would present serious threats to safety for unaccompanied children.
37. For the above reasons, I conclude on this issue that the proposal would conflict with Policy CS12 which require new development to have a satisfactory level of amenity space and Saved Appendix 3 of the Local Plan 2004 which identifies appropriate standards for new residential development and those part of the Framework which require new development to enhance the quality of life and support health and well being.

Conclusions on living conditions

38. The scheme includes shortcomings in respect of how it would not comply with the Council's standards and policies in respect of the matters above. Whilst individually a divergence from policy or standards would not be necessarily fatal for the scheme it is both their combination and occurrence which would seriously prejudice the living conditions of future occupiers.
39. For these reasons, I conclude that the proposed scheme would conflict with Core Strategy policies CS12 and CS32 and Saved Appendix 3 of the Local Plan and those sections of the Framework designed to promote health and wellbeing.

Overdevelopment

40. The Council's case on this main issue is framed around a compilation of its other objections including design, parking, amenity space, noise, sunlight and daylight together with a consideration of the unit sizes of the individual flats.
41. Central to the Council's objection to the proposed size of the individual 'market' flats are the application of space standards. Policy 18 requires adherence to any relevant floorspace standards. Whilst the Technical Housing Standards⁸ (2015) are not part of the local plan they provide guidance and are a suitable benchmark against which standards of development can be compared. They inform the Framework's policies. Although all the affordable flats meet these standards, this is not true for the market flats.
42. From the evidence submitted together with my assessment of the accommodation schedules a significant proportion of the market flats fail the

⁸ Ministerial Statement to Parliament 23 March 2015 regarding the Technical Housing Standards - nationally described space standards DCLG 2015

- standards. The appellant acknowledges that around 77% of all flats (including the 35% which are affordable) would either comply or be within 3sm of the space standards. However, a significant number of the proposed market flats would fail this standard by a greater margin.
43. The appellant suggests that the shortfall in space standards affects the 1B/2p and 2B4P flats which could be reconfigured to provide 1B/1P and 2B3P flats. If implemented this suggestion would result in a completely new scheme. It is unclear, if I were minded to allow this appeal, how this suggestion could adequately resolve this matter at this stage in the appeal process given the test of reasonableness which underpins the Wheatcroft principles.
44. In respect of the other matters identified in the Council's fourth reason for refusal, for the reasons which I have already identified in this letter under the first and second main issues in this decision, the proposed design would not adhere to the general principles required by adopted policy for delivering a high quality design. The quantum of development proposed is excessive for this site and would result in development which would compromise the living conditions of future occupiers. Accordingly, it is in conflict with Policies CS10, CS12 and CS34.
45. The scheme would not adhere to adopted policy required to protect the living conditions of future occupiers. In particular, the impact of noise on those flats fronting Maylands Avenue, infringements of appropriate daylight and sunlight standards including the large number of single aspect north facing flats, the size of the balconies and the location of and amount of public amenity space. Furthermore, the infringement of internal space standards weighs heavily against the scheme given that almost 50% of the units are designed as family accommodation.
46. To conclude on this matter, the scheme would prejudice the living conditions of future occupiers and would therefore conflict with Policies CS10, CS12, CS32 and CS34 which require new development to be of a high quality design, with measures to protect from noise and Policy 18 and Saved Appendix 3 of the Local Plan 2004 which identifies the importance of appropriate floorspace standards for new residential development. Furthermore, the appeal scheme conflicts with those parts of the Framework which require new development to be well designed and be appropriately located in respect of noise and which require development to enhance the quality of life and support health and well being.

Parking provision

47. The appeal scheme includes 334 parking spaces of which 268 are for the residential component and 66 for the commercial part of the scheme. There is an overall shortfall of around 72 spaces.
48. However, within these figures, 25 more spaces are included for the commercial part of the scheme than required by the Council's maximum standard and the deficit of 72 spaces is caused by the shortfall for the residential element only.
49. The Council's residential parking standards are predicated on its 'Accessibility Zoning', i.e. how areas would allow for modal choice. For example, the accessibility of a site from the town centre, transport hubs and cycle and bus routes.

50. The appeal site lies within Zone 3 rather than, as the Council states, Zone 4. In practice the residential parking requirement is the same, but the zoning does reflect that the site is more accessible than the Council's initial appraisal indicated.
51. Furthermore, the parking standards allow discretion in their interpretation and in the case of the appeal scheme would allow for a variance of up to 50% for sites in Zone 3 from the parking required for the commercial part of the scheme. The application of this allowance together with the over provision results in the scheme having around an additional 25 parking spaces for the commercial element of the scheme. For this reason, the actual shortfall would not be as high as the figure suggested by the Council.
52. The appellant suggests that the excess spaces for the commercial part of the scheme could be used by residents to address their shortfall and have suggested a planning condition to address this, were I minded to allow the appeal. I am satisfied that the suggested condition would meet the tests included in Guidance⁹.
53. This suggested measure together with a re-assessment of the site's location within Zone 3 of the Council's Accessibility matrix demonstrates that the site benefits from a choice of transport modes with reduced car dependency when compared to that assessed by the Council.
54. For these reasons, I conclude on this main issue that the proposal would not be in conflict with Policies CS8 and CS12 (parking) of the Core Strategy 2013 Saved Policies 51 and 58 and Saved Appendix 5 of the Dacorum Local Plan (2004) and the Accessibility Zones for Car Parking standards (2002).

Unilateral Undertaking

55. The appeal was accompanied by a completed Unilateral Undertaking which includes the provision of affordable housing and financial contributions to a new bus stop, monitoring of the travel plan and a car club. As I am dismissing this appeal, I do not have to consider this matter further.

Planning balance and conclusions

56. Both parties acknowledge that the Council cannot demonstrate a 5 year supply of deliverable housing. In these circumstances, paragraph 11(d) and footnote 7 of the Framework state that the policies which are the most important for determining the application should be considered as out of date, and that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.
57. However, the fact that policies have to be considered as out of date does not mean that they carry no weight. To carry weight policies must be consistent with the Framework, as explained in Paragraph 213 which amongst, other things, explains that the closer that policies in the plan are to policies in the Framework, the greater weight that may be given to them. As such it is perfectly possible for policies which are deemed out of date for reason of an inadequate land supply to still carry significant weight.

⁹ Planning Policy Guidance

58. I consider that this to be the case for this appeal as all the policies cited in the Council's first, third and fourth reasons of refusal deal with aspects of design and living conditions and ways of addressing them to ensure high quality design and the protection of the health and well being of future occupiers of the scheme.
59. This is in total accord with the objectives of the Framework, in particular with Paragraphs 124, 127, 170 and 180. In summary therefore, despite the policies cited in the Council's reasons for refusal being deemed out of date, I consider that they still carry significant weight in the determination of this appeal. The appeal should be determined in line with Paragraph 11(d)(ii).
60. Set against the conflict with adopted policy, the appeal scheme includes a range of benefits when assessed against the policies of the Framework as a whole. In terms of the environmental dimensions of the Framework, it would involve the redevelopment of brownfield land with a high density scheme. The site lies on the route of several regular bus services enabling access to both the town centre and rail station.
61. The scheme would also result in the creation of additional employment opportunities both in the short term through construction jobs and in the long term through the occupation of commercial floorspace and by the increased spending power for the local economy from residents.
62. In terms of the social objectives of the Framework the appeal scheme would include a policy compliant amount of affordable housing and 174 market units. This would partially address housing need and also contribute to the Council's undersupply of housing land.
63. I accord the financial contributions through the Community Infrastructure Levy and the Undertaking only neutral value as they are required for the scheme in line with the Framework.
64. However, the scheme has design failings which would not result in a high quality built environment with a clearly defined sense of place. In this respect, it would be in conflict with the social objectives of the Framework which identify that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve.
65. Many of the market units would, through a combination of their aspect, limited amenity space, proximity to sources of noise and limited space standards, not address the other social objectives of the Framework which support, strong vibrant and healthy communities.
66. I recognise that physical constraints on many brownfield sites require a flexible interpretation of standards as suggested by Paragraph 123 of the Framework. However, the appeal site is a large brownfield site, set well away from surrounding residential development. Many of the constraints are inherent within the scheme's design.
67. It is both the combination and high level of occurrence of its failures to meet standards which undermine the social objectives of the Framework. In so doing it fails to deliver well designed places and would not promote resident's health and wellbeing. Adherence to the national technical standards is at the heart of achieving the Government's social objectives for sustainable development in

this regard. The requirement for additional housing units should not compromise the drive for quality.

68. Overall, I conclude that the harm caused in this case would significantly and demonstrably outweigh the benefits identified when assessed against the policies in the Framework taken as a whole. As such the proposed development does not benefit from the Framework's presumption in favour of sustainable development.
69. Bearing all of the above in mind, there are no material considerations, including the Framework, that would indicate that the decision in this case should be taken otherwise than in accordance with the Development Plan. Accordingly, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Stephen Wilkinson

INSPECTOR