



Appeal Decision

Hearing Held on 10 March 2021

Site visit made on 11 March 2021

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd June 2021

Appeal Ref: APP/G5750/W/20/3253777

274-276 Neville Road, Forest Gate, London E7 9QN

- 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 4C Properties Ltd against the decision of the Council of the London Borough of Newham.
 - The application Ref 19/02596/FUL, dated 20 September 2019, was refused by notice dated 17 December 2019.
 - The development proposed is described as the "erection of 1 apartment block, 3-4 storey's comprising 3 No. one bed dwellings, 4 No. two bed dwellings, 5 No. 3 bed family dwellings and landscaping".
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 1 apartment block, 3-4 storey's comprising 3 No. one bed dwellings, 4 No. two bed dwellings, 5 No. 3 bed family dwellings and landscaping at 274-276 Neville Road, Forest Gate, London E7 9QN in accordance with the terms of the application, Ref 19/02596/FUL, dated 20 September 2019, subject to the conditions on the attached schedule.

Preliminary Matter

2. Since the appeal was submitted, the Mayor of London has published the new London Plan 2021 (LonP). Thus, policies from the London Plan 2016 referred to within the Council's reason for refusal have been replaced. Both parties have referred to the LonP within its written statement and it was agreed at the Hearing that Policies GG4 and H5 of the LP are relevant to the development before me.

Main Issue

3. The Council's decision notice states that the development would fail to deliver the maximum quantum of affordable housing that can be reasonably achieved on the site. In addition, the decision notice also states that the appellant's viability review has been independently scrutinised which reveals that a higher surplus is achievable which could contribute towards the delivery of affordable housing.
4. At the Hearing, the parties submitted a Statement of Common Ground which confirmed that an agreement had been reached on the salient matter relating to the provision of affordable housing. In addition, a signed and completed obligation (the obligation) under section 106 of the Town and Country Planning

Act 1990 has also been provided which secures, amongst other things, an appropriate level of affordable accommodation.

5. Therefore, having regard to the above, the main issue in this appeal is whether the submission of the obligation would provide a satisfactory level of affordable accommodation as part of the development.

Reasons

6. The appeal site forms a former builder's merchants that has since been demolished. The site is located within a mixed use area of residential, commercial, and retail properties that is close to services, amenities and public transport links. The principle of residential development at the site is therefore acceptable, subject to a level of affordable homes being provided as part of the proposal.
7. Policy H2 of the London Borough of Newham Local Plan 2018 (LP) requires that 50% of the number of all new homes built over the plan period are affordable units. Specifically, subject to an appropriate mix, developments on individual sites with a capacity for 10 units or more, between 35-50% of the number of units shall be provided as affordable housing, ensuring a tenure mix as set out therein. As the development proposes 12 units of accommodation, there is a requirement to provide affordable homes.
8. The appellant initially sought a development without providing an element of affordable housing, arguing within its 2019 Viability Assessment Report¹ (VAR) that a surplus of £81,000 identified against the site value benchmark of £650,000, would not be sufficient to provide an element of affordable housing. As such, the appellant offered a payment in lieu of providing affordable housing.
9. In accordance with Policy H2 of the LP, the Council undertook an appraisal of the 2019 VAR which revealed that, as a development of 100% private housing, the site would generate a larger surplus and thus, it could indeed viably provide an element of affordable housing. Following the submission of a further VAR in 2020, which was again reviewed by the Council, it was agreed by the parties that the development could viably provide some 17% on-site affordable homes, thus providing two social rent units. The surplus of £36,271 could be used to provide a commuted sum in lieu of the remaining affordable units.
10. Consequently, within the obligation the development will deliver two affordable units with the surplus commuted to the Council in lieu of the remaining affordable units. However, in light of the fact that the development proposed is not able to meet the threshold target of 35% affordable housing provision, the obligation provides for the development viability to be reassessed to test that the affordable housing provision on the site has been optimised. This approach is supported by policy H5 of the LonP, which requires that development is subject to a comprehensive early and late stage viability review.
11. The obligation also includes financial contributions towards highway works, car free monitoring, and carbon offsetting. Other matters are also provided such as a car club scheme, a residential welcome pack, parking permit restrictions, and the support of local labour. These aspects of the obligation are a neutral factor required to make the development acceptable in planning terms. However, I

¹ Viability Assessment Report

consider the obligations to be necessary, relevant and fairly related to the development proposed as required by CIL² Regulation 122.

12. Thus, I am satisfied that, with the completed obligation, the development would make an appropriate provision for affordable housing. It would be in accordance with Policies H1 and H2 of the LP and Policies H5 and GG4 of the LonP.

Other Matters

13. I note that an objection to the development has been received, raising additional concerns. The appeal site is within a location that has good access to public transport and the Council confirm that in areas with a PTAL³ rating of 4 (Good) shall be car free. Moreover, the planning obligation provided removes the rights for residents to apply for parking permits in the area and to be provided with details of how to join a 'car club'. Furthermore, there has been no objection to the development on highway and pedestrian safety grounds, and from the evidence that has been provided, I find no reason to disagree with that conclusion.
14. The proposal would also be the subject of a condition requiring the appellant to provide details of how the development would be constructed using 'Secure by Design' methods to ensure that crime and anti-social behaviour have been taken into account which would allay concerns regarding security at the site.

Conditions

15. The Council has suggested a number of conditions that I have considered in accordance with the National Planning Policy Framework (the Framework) and the national Planning Practice Guidance. In some instances, I have amended the conditions for clarity and concision as agreed by the parties during the Hearing. The Council has suggested conditions that must be discharged before any development commences. The appellant has agreed in writing that in accordance with the pre-commencement regulations⁴, such conditions are acceptable.
16. Along with the standard time condition (1), the approved plans (2) should also be specified to provide certainty. In the interest of the environment and local air quality, before any development commences, details of a risk assessment undertaken to control dust and emissions (3) from the construction and an Air Quality Neutral Calculation (6) shall be submitted to and approved by the Council. In addition, to protect living conditions of adjoining residential occupiers from the potential impact of the development, details of a construction management and logistics plan (4) must be agreed with the Council and the hours of construction (19) shall be limited. To protect the area from potential risk from flooding, surface water drainage details (5) must also be agreed in writing with the Council before development commences.
17. In the interest of the visual amenities of the area, details and samples of materials (7) to be used in the construction of the development, and a landscaping scheme (14) must be agreed with the Council. To minimise the effect of the development on local air quality, each dwelling shall be fitted with

² Community Infrastructure Levy (CIL) Regulations 2010

³ Public Transport Accessibility Levels

⁴ Town and Country Planning (Pre-Commencement Conditions) Regulations 2018

- an ultra-low NOx boiler (9) and the development must be carried out in accordance with the submitted Energy Statement (10). All non-road vehicles used during the construction of the development shall also use ultra-low sulphur diesel (17).
18. To ensure that the development fully considers the reduction of crime and anti-social behaviour to minimise any detriment to health and wellbeing, details of Secure by Design (11) shall be agreed with the Council. To ensure that the development is fully accessible, charging points for mobility scooters (15) are to be provided within each wheelchair accessible dwelling. In addition, 90% of the dwellings shall be constructed to conform with Category M4(2) – Accessible and Adaptable Dwellings (20), and 10% of the dwellings shall be constructed to conform with category M4(3) – Wheelchair User Dwellings (21) of the Building Regulations 2010.
19. To encourage sustainable modes of transport, details of secure cycle storage (13) must be agreed and in the interest of pedestrian safety, details of a Delivery and Servicing Plan (12) shall also be agreed with the Council. Biodiversity enhancements (16) shall also be provided through an agreed statement.
20. To ensure that the living conditions of surrounding occupiers and underground sewerage infrastructure is not affected by the development, details of intended piling shall be agreed with the Council through the submission of a Piling Method Statement (8). In the interest of human health, any soils and infill material (18) may not be brought onto the site unless they have been satisfactorily proven to be uncontaminated, details of which must be submitted to and approved by the Council.

Conclusion

21. For the reasons given above, and having regard to the development plan when read as a whole, the appeal is allowed.

Graham Wyatt

INSPECTOR

APPEARANCES

For the Appellant

Mr Emilios Tavellas	Senior Planner - Savills
Mr Simon Wallis	Planning Director – Savills
Mr Gareth Turner	Viability Director - Savills

For the Council

Mr Sean Scott	Principal Planner London Borough of Newham
Mr James Bolt	Senior Development Manager London Borough of Newham
Mr Nicholas Pell	BNP Paribas (Financial Viability advisor to London Borough of Newham)

Schedule of Conditions

1. Time limit

The development to which this permission relates must be commenced not later than the expiration of three years from the date of this permission.

2. Approved plans and documents

The development hereby approved shall be carried out in accordance with the following approved plans and documents:

DR/13/474/E01 – Existing site plan/ roof plan
DR/13/474/E02 – Existing elevations and site sections (1 of 3)
DR/13/474/E03 – Existing elevations and site sections (2 of 3)
DR/13/474/E04 – Existing elevations and site sections (3 of 3)
DR/13/474/E05 – Site Location Plan
DR/13/474/P10 Rev E – Proposed site plan with ground floor plan
DR/13/474/P11 Rev E – Proposed first floor plan
DR/13/474/P12 Rev E – Proposed second floor plan
DR/13/474/P13 Rev E – Proposed third floor plan
DR/13/474/P14 Rev E – Proposed roof plan
DR/13/474/P15 Rev D – Proposed elevations 1 + 2
DR/13/474/P16 Rev D – Proposed elevations 3
DR/13/474/P17 Rev D – Proposed elevations 5+6
DR/13/474/P05 – Accommodation schedule

Prior to commencement conditions:

3. Control of Dust and Emissions from Construction (Detailed)

Prior to the commencement of construction, a risk assessment shall be undertaken in compliance with the Greater London Authority and London Councils “the Control of Dust and Emissions from Construction and Demolition SPG”. The risk assessment and the monitoring and mitigation plan shall be submitted to and approved in writing by the Local Planning Authority. Works shall be undertaken in accordance with the approved risk assessment, monitoring and mitigation plan.

4. Construction Management and Logistics Plan

No works shall commence unless and until a Construction Management and Logistics Plan has been submitted to and approved by the Local Planning Authority. The Construction Management and Logistics Plan shall include:

- all structures;
- parking of vehicles of site personnel and visitors;
- sourcing of materials;
- storage of plant and materials;
- dust management controls;
- details of ground works and decontamination;
- location and height of cranes and scaffolding;
- scheme for security fencing / hoardings, depicting a readily visible 24-hour contact number for queries or emergencies;
- details of disposal of waste arising from the construction programme, including final disposal points (the burning of waste on the site at any time is specifically precluded);

- survey of the existing conditions of adjacent public highways;
- site access and exit arrangements including wheel washing facilities and sweep-paths where required;
- vehicular routes, booking systems and an assessment for the scope of consolidating loads to reduce generated road trips;
- proposed temporary access and parking suspensions and any temporary access and parking solutions required;
- Site compound arrangements including arrival of vehicles, parking, loading, storage and waste arrangements;
- methods for of protection of adjacent highway infrastructure;
- an assessment of all matters as are likely to cause nuisance to adjoining occupiers (including but not limited to; noise, dust, smoke, road cleaning, odour control) accompanied by mitigation measures addressing all matters relevant to this particular site;
- hours of operation;
- smoke management controls;
- odour controls; and
- road cleaning and wheel washing facilities.
- an assessment of the cumulative impacts of construction traffic;
- details of the likely volume of construction trips and any mitigation measures proposed;
- site access arrangements;
- booking systems;
- construction phasing;
- vehicular routes; and,
- scope for load consolidation to reduce generated road trips.

Works shall be carried out in accordance with the approved Construction Management and Logistics Plan.

5. Surface Water Drainage Detail

- a) No part of the development hereby permitted shall be commenced until a fully detailed surface water management scheme for the development has been submitted to and approved in writing by the Local Planning Authority.
- b) Post development peak runoff shall be restricted to a maximum of 2l/s or to the calculated corresponding greenfield rate for all storm events up to and including the 1 in 100 year with an additional 40% allowance for future climate change.
- c) A completed 'The London Sustainable Drainage Proforma' (Link: Newham LLFA drainage pro-forma) shall be completed and submitted for approval before beginning of development.
- d) Detail of drainage scheme ownership, management and maintenance arrangements shall be submitted to Planning Authority for approval before site occupation.
- e) The development shall only be implemented in accordance with the approved detail.
- f) A verification report stating what works were undertaken and that the drainage scheme was completed in accordance with the approved surface water management scheme shall be submitted and approved by the Local Planning Authority in writing before site occupation.

6. Air Quality Neutral

Prior to the commencement of works an Air Quality Neutral Calculation of transport and building emissions compared to the Air Quality Neutral benchmarks must be carried out as part of the assessment of air quality impacts. Where the Air Quality Neutral benchmarks cannot be met either the required mitigation measures or relevant contribution to off-setting emissions must be submitted to and agreed by the Local Planning Authority.

Prior to above ground works conditions

7. Materials

No above ground works shall be commenced unless and until details and samples of all external surfaces for pertaining to the block have been submitted to the Local Planning Authority for approval in writing. This shall include physical mock up(s) of a typical window bay showing full details of brickwork bond, mortar, window and reveal details which shall be erected on site and be approved in writing by the Local Planning Authority. The relevant works shall be carried out in accordance with the approved sample details.

8. Piling Method Statement

No piling shall take place until a Piling Method Statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, potential harm to the living conditions of neighbouring occupiers, and the programme for the works) has been submitted to and approved in writing by the local planning authority, in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

9. Air Quality, Ultra Low NOx boiler

Prior to the occupation of the development, details shall be submitted to and approved by the Local Planning Authority, for the installation in each dwelling of an Ultra Low NOx boiler with maximum NOx Emissions of under 40 mg/kWh. The works, as approved, shall be completed prior to occupation and thereafter permanently retained.

10. Energy Statement

The development shall be carried out in complete accordance with the Energy Statement by Evergreen Living Limited, July 2018, Project No. 7494 and permanently retained thereafter.

Prior to first occupation/use conditions:

11. Secured By Design

Prior to the first occupation of any part of the development, a 'Secured by Design' accreditation shall be obtained for the relevant Secured by Design guide(s) or alternatively achieve Secured by Design standards to the satisfaction of the Metropolitan Police. Details of which shall be provided in writing to the Local Planning Authority prior to first habitation or use. All security features are to be fully retained and maintained for the lifetime of the development.

12. Delivery and Servicing Plan

No residential or commercial unit shall be first occupied unless and until details relating to a Delivery and Servicing Plan have been submitted to and approved in writing by the Local Planning Authority. The submitted Delivery and Servicing Plan shall:

- a) seek to rationalise the number of deliveries and servicing with the aim of reducing traffic impacts for the development;
- b) include details of the location and management of servicing areas for the development;
- c) ensure that delivery space and time is actively controlled through measures set out in the Delivery and Servicing Plan; and
- d) set out the measures to enforce the servicing arrangements for the development with particular reference to HGC servicing arrangements.

The approved Delivery and Servicing Plan shall be fully implemented for the life of the development.

13. Cycle parking

No residential unit shall be first occupied unless and until details of the proposed secure cycle parking for the development, including CCTV and lighting for the cycle storage area, have been submitted to and approved in writing by the Local Planning Authority. Upon completion of the development a minimum of 21 cycle spaces shall have been provided, and those cycle spaces shall be retained and available for use for the lifetime of the development.

14. Landscaping

- a) No residential unit within the development hereby permitted shall be first occupied unless and until details of landscaping and a maintenance scheme have been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include a detailed specification of plant/tree types (common and Latin names) and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying where appropriate. The scheme shall also include full details of any lighting, landscape features or artworks, furniture and any play equipment.
- b) All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in an agreed timescale to be included in the aforementioned landscaping scheme.
- c) All hard surface and play areas agreed as part of the scheme shall be carried out before the first occupation of the buildings or upon the completion of the development whichever is the earlier.
- d) Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.

15. Mobility Scooter Charging Point

The development hereby permitted shall not be first occupied unless and until mobility scooter charging infrastructure, to serve each wheelchair user dwelling. The electric charging infrastructure shall be retained for the lifetime of the development.

16. Biodiversity Statement

No residential unit shall be first occupied unless and until a Biodiversity Statement has been submitted to and approved in writing by the Local Planning Authority. The detailed Biodiversity Statement shall detail biodiversity enhancement measures to include, but not exclusive to:

- the provision of vegetation including trees within communal and private garden areas and incorporation of sedum roofs.
- bird boxes.

The measures shall thereafter be installed in accordance with the approved Biodiversity Statement in perpetuity.

Monitoring/management conditions

17. Site specific non-road mobile vehicles, Air Quality

During onsite construction works, all non-road transportable industrial equipment or vehicles which are fitted with an internal diesel powered compression ignition engine between 37 and 560KW and not intended for transporting goods or passengers on roads are required to meet Stage IIIB of EU Directive 97/68/E and be NRMM registered. Such vehicles must be run on ultra-low sulphur diesel (also known as ULSD 'cleaner diesel' or 'green diesel'). "ultra-low sulphur diesel" means fuel meeting the specification within BS EN 590. Where these standards are succeeded, they should be applied when reasonable but not later than 1 year after.

Exemptions to these standards may be granted for specialist equipment or for equipment with alternative emission reduction equipment or run on alternative fuels. Such exemptions shall be applied for in writing to the LPA in advance of the use of such vehicles, detailing the reasons for the exemption being sought and clearly identifying the subject vehicles. Exemptions that are granted will be in writing and such vehicles must not be used until written exemption has been received by the applicant.

No vehicles or plant to which the above emission standards apply shall be on site, at any time, whether in use or not, unless it complies with the above standards, without the prior written consent of the local planning authority.

18. Importation of soils and Infill materials

No soils, or infill materials, are to be brought onto the site unless they have been satisfactorily proven to be uncontaminated and present no risks to human health, planting and the environment. A declaration to this effect, together with acceptable documentary evidence to confirm the origin of all imported soils and infill materials, supported by appropriate chemical analysis test results, must be submitted to and be approved in writing by the Local Planning Authority prior to occupation.

19. Hours of construction

No construction or building works shall be carried out on the site except between the hours of 08:00 and 18:00 on Mondays to Fridays and between 08:00 and 13:00 on Saturdays and at no other time including Sundays and Bank Holidays/Public Holidays.

20. Building Regulations M4(2)

90% of the residential units hereby approved shall conform to the requirements of Category M4(2) ['Accessible and Adaptable Dwellings'] of Schedule 1 to the Building Regulations 2010 (HM Government 2015).

21. Building Regulations M4(3)

10% of the residential units hereby approved shall conform to the requirements of Category M4 (3) ['Wheelchair User Dwellings'] of Schedule 1 to the Building Regulations 2010 (HM Government 2015).

~End~