
Appeal Decision

Site visit made on 23 June 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2021

Appeal Ref: APP/B5480/W/21/3268824

19 The Parade, Colchester Road, Romford RM3 0AQ

- 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 A Ariel, Bercleys Limited against the decision of the Council of the London Borough of Havering.
 - The application Ref P1657.20, dated 11 November 2020, was refused by notice dated 6 January 2021.
 - The development proposed is alterations to the layout and elevations and materials to an existing building for residential use.
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Decision

1. The appeal is dismissed

Application for costs

2. An application for costs was made by Mr A Ariel, Bercleys Limited against the Council of the London Borough of Havering. This application is the subject of a separate Decision.

Procedural Matters

3. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties were given the opportunity to comment on the implications of the resulting changes for this appeal. The references to 'the Framework' made within my decision are to this revised version.
4. Since the Council issued its decision, the London Plan 2021 (LonP) was published. Consequently, policies of the previous London Plan 2016 have been superseded. The Council's appeal statement identified the policies of the LonP that it considers are relevant to the appeal, and the appellant had the opportunity to address this through appeal submissions. I am therefore satisfied that no prejudice would be caused by my consideration of the appeal against the policies of the LonP, and I have determined the appeal accordingly.
5. My attention has been drawn to the emerging Havering Local Plan which was subject of examination during 2019. A consultation in relation to the Main Modifications document closed in November 2020. The emerging plan is therefore at quite an advanced stage. However, I have not been directed to any emerging policies, or changes to existing policies, that are considered to impact on the appeal proposals. It has not therefore had a bearing on my decision.

Main Issue

6. The main issue is whether the proposed development would provide satisfactory living conditions for future occupiers, with regard to internal space, daylight and sunlight, and outlook.

Reasons

7. The appeal site comprises a detached single storey office building and associated outside space situated to the rear of the host property, number 19 The Parade (No 19). No 19 forms part of a pair of two storey semi-detached properties located on the southern side of The Parade. Similar to other properties along The Parade, the ground floor units are in commercial use with residential above. The appeal site is accessed via the ground floor shared hallway of No 19.
8. There is no dispute between the parties that the proposed residential units would fail to meet the Nationally Described Space Standard 2015 (NDSS) as required by LonP Policy D6. It is clear from the evidence provided that all of the units would fall below the minimum standard for Gross Internal Area by quite some margin. In addition, there would be no meaningful outlook from the units due to the mostly single aspect design, and the proximity of the proposed window openings to the site's boundary with the neighbouring property.
9. In order to protect the privacy of the occupiers of the neighbouring property the Council indicated that a boundary treatment of approximately 2 metres in height would need to be provided. The result of such mitigation would be that the outlook for future occupiers of the proposed units would be extremely limited, resulting in overbearing impacts. This arrangement would further diminish the already limited amount of natural light that would reach the habitable rooms of the proposed units.
10. I conclude that the proposal would fail to provide adequate living conditions for future occupiers with regard to the provision of internal space, daylight and sunlight, and outlook. Thus, it would conflict with Policy DC61 of the Council's Core Strategy and Development Control Policies Development Plan Document 2008, LonP Policy D3, the Council's Residential Design Supplementary Planning Document 2010 and the NDSS, which together and amongst other matters, require development to be high quality and provide acceptable accommodation.

Other Matters

11. I note the concerns raised by an interested party with regard to fire safety, the condition of the appeal building and parking arrangements in the vicinity of the site. Given my findings in relation to the main issue I have not considered these matters any further.

Fallback Position and Planning Balance

Fallback position

12. Section 38(6) of the Planning and Compulsory Purchases Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

13. Whilst the appellant accepts that the appeal proposal fails to meet minimum internal space standards, it is argued that there is a fallback position which is a material consideration capable of outweighing the identified conflict with the development plan. The appeal building benefits from extant prior approval¹ for a change of use from an office (Use Class B1a) to residential (Use Class C3) to create three self-contained flats. This prior approval was granted under Class O of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).
14. It is asserted that the appeal scheme would result in a better standard of living accommodation than would be achieved under the extant approval. This would be in terms of increased internal space and natural light provision, improved outlook and overall appearance of the building.
15. However, for this possibility to be given any significant weight there should be a real prospect of that development taking place. This is a matter of planning judgement dependant on the particular circumstances of a case as set out in the case of *Malling*² which I have been directed to.
16. Although the appellant states that in the absence of approval of this appeal they would make use of the permitted development right granted under the prior approval, I am not convinced on the evidence before me that there is a more than theoretical possibility that the development might take place. This is because the particular permitted development allowed under Class O extends to the change of use only, it does not permit any external changes to the building. Full planning permission is required for the necessary external changes.
17. I have not been directed to any attempt by the appellant to secure the required planning permission. This casts considerable doubt in my mind as to the intention of the appellant and, therefore, to the likelihood of the permitted development being carried out. The condition of the building appears to be very poor, and I have no other substantive evidence before me, such as a structural survey, to demonstrate that it would be physically capable of successfully accommodating the permitted change of use. There is no assurance that planning permission will be granted for the required external alterations.
18. On this basis, I do not consider that the fallback position amounts to a greater than theoretical possibility and the weight that I afford it is very limited. Accordingly, it is not a material consideration of such weight that it amounts to a sufficient justification that outweighs the policy conflict and harm with regard to living conditions that I have identified.

Planning Balance

19. The Housing Delivery Test 2020 indicates that the delivery of housing within the borough has been substantially below the housing requirement over the past three years. Consequently, the presumption in favour of sustainable development contained within the Framework is engaged, whereby planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole.

¹ Council reference: J0005.20 dated 27 March 2020

² *Mansell v Tonbridge and Malling Borough Council and Others* [2017] EWCA Civ 1314

20. The proposal would contribute three residential units to the supply of housing making use of previously developed land, as sought by the Framework. There would be an improvement to the appearance of the building, thereby contributing to the environmental aims of the Framework. However, the weight I can afford these benefits is very limited given that the quality of the accommodation proposed would fall below national and local minimum standards. The Framework states that good design is a key aspect of sustainable development and that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.
21. Consequently, the proposal would fail to accord with the environmental and social objectives of the Framework. This is a matter I give significant weight.
22. In my view, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Therefore, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.
23. The proposal would be contrary to the development plan as a whole and this conflict is not outweighed by other material considerations, including the provisions of the Framework.

Conclusion

24. For the reasons given above the appeal is dismissed.

S Tudhope

INSPECTOR