



Appeal Decision

Site visit made on 23 June 2022

by D Wallis MRTPI, BSc (Hons), PGDip (Environmental Planning)

an Inspector appointed by the Secretary of State

Decision date: 13 July 2022

Appeal Ref: APP/Q5300/W/21/3281393

The Cart Overthrown Public House, 434 Montagu Road, London, N9 0ER

- 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 Ercan Ucur against the decision of London Borough of Enfield.
 - The application Ref 19/00043/FUL, dated 3 January 2019, was refused by notice dated 1 June 2021.
 - The development proposed is Redevelopment of site and erection of part-5, 7 and part-8 storey block of 61 Self-contained flats comprising (10 x 1 bed, 18 x 2 bed, 26 x 3 bed and 7 x 4 bed) involving balconies together with 1 x ground floor commercial unit (A4 use), ground floor parking, new access, landscaping and associated works.
-

Decision

1. The appeal is allowed and planning permission is granted for the Redevelopment of site and erection of part-5, 7 and part-8 storey block of 61 Self-contained flats comprising (10 x 1 bed, 18 x 2 bed, 26 x 3 bed and 7 x 4 bed) involving balconies together with 1 x ground floor commercial unit (A4 use), ground floor parking, new access, landscaping and associated works, at The Cart Overthrown Public House, London, N9 0ER in accordance with the terms of the application, Ref 19/00043/FUL, dated 3 January 2019, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal is accompanied by a legal agreement pursuant to section 106 of the Town and Country Planning Act 1990 (as amended), signed and dated 12 July 2022. I have reviewed the document and consider it meets the statutory tests for imposing obligations. Its terms are not in contention between the main parties, and I have taken this into account in my decision.

Main Issues

3. The main issues for the appeal are:
 - the effect of the development on the character and appearance of the area, including landscape character;
 - the effect of the development upon highway network; and
 - whether or not sufficient affordable housing would be provided.

Reasons

Character and appearance

4. Montagu Road is a predominantly residential area. There is a mix of dwelling types, heights and designs along its length and immediate site streets, dating from different periods of construction. Most notable is Walbrook House, which is a building of over 20 storeys in height and a dominant feature on the local skyline. Claverings Industrial Estate is a pocket of non-residential use in the vicinity, with its buildings of varying proportions and scale. The area is very much urban in character with only small strips of landscaped frontage on Montagu Road and Pickett's Lock Lane.
5. The appeal site comprises a large, detached building formerly used as the Cart Overthrown Public House. At the time of my visit, the building was being used as a charity shop with accommodation above, and a car wash facility with associated paraphernalia adjacent. The appeal site sits alone in visual terms, a focal point in between residential and industrial character areas and not directly related to either. The former beer garden was largely overgrown during my visit, but there was little greenery elsewhere within the appeal site.
6. The proposed building would be predominantly 5 storeys in height, rising to 8 storeys on the corner between Montagu Road and Pickett's Lock Road. A drinking establishment and undercover parking are proposed at ground floor level, with a landscaped strip along the appeal site's frontage and communal gardens incorporated at various elevated positions within the proposed building's design.
7. There are 2, 3 and 4 storey buildings all prevalent in the area, with Walbrook House rising to over 20 storeys in height. The proposed 8 storey element of the development would not appear out of place given this context, with the majority of the building comparable in height to nearby residences. The proposal would visually contrast with the immediate surroundings, but its modern design and appearance would serve as an enhancement to the locality, and an improvement on the current building on the appeal site. Whilst the proposed building would have a wide continuous frontage, I noted the 4-storey terrace on the opposite side of Montagu Road has similar characteristics.
8. Green space would be provided to soften the appearance of the development from Montagu Road. In addition, rooftop gardens would provide large communal areas to serve the flatted development. This would modestly meet the needs of the proposed development and provide attractive recreation space. I note that there are greater opportunities for leisure space in close proximity to the appeal site at the Lee Valley Leisure Complex including the William Girling Reservoir.
9. I therefore consider that the proposed development would not be excessive for the site and would serve to regenerate the area with a locally notable design. I also conclude that open space would be adequately provided on site and that any perceived shortfall would be exceeded by local opportunities for sport and recreation within walking distance. With areas dedicated for open space, parking and circulation around the building, the proposal would not constitute an overdevelopment of the plot.
10. The proposal would not cause harm to local character or appearance. The proposal therefore complies with policies D3, D4, D6, G5 and G7 of the London Plan 2021 (the LP), policies CP4 and CP30 of the Enfield Core Strategy 2010 (the CS) and policies DMD6, DMD8, DMD9, DMD37, DMD73, DMD80 and

DMD81 of the Enfield Development Management Document 2014 (the DMD), which all seek high quality design to be secured in new developments.

Highway Network

11. The main parties agree that the appeal site has a Public Transport Accessibility Level of 2 and that a total of 37 car parking spaces are proposed to serve the 61 flats. Within the landscaped strip on the frontage, 16 cycle spaces would be provided for public use, whilst a further enclosed 120 cycle spaces would serve the residential development. No spaces were directly proposed to serve the drinking establishment although I note the appellant's suggestion of a condition that 1 space could be retained for that unit.
12. Policy T6 of the LP sets out maximum parking provision levels for new development, with the aim to reduce dependency on the private car. Local planning policies direct my attention back to the LP.
13. At 37 spaces, the proposed parking provision, in tandem with the emphasis on cycle parking, is wholly in accordance with Table 10.3 for residential spaces within policy T6.
14. In respect of the commercial unit at ground floor, which would be 489 square metres in floor area, policy T6 suggests schemes should be assessed on a case-by-case basis. The proposed use would generate staff needs and therefore allocating a parking space for staff would be necessary in my view, even with the readily available cycle parking proposed within the scheme. The proposed drinking establishment would be well-situated to benefit the local community that would likely walk or cycle in order to access it.
15. I also noted on my site visit that parking restrictions and controls were used on Montagu Road as well as adjacent side roads, with dedicated lay-bys providing the official on-street parking areas. It would therefore be unlikely that the development could increase on-street parking significantly within the vicinity of the appeal site, thus traffic flow would not be impacted upon.
16. For these reasons, I find that the proposed development would not cause harm to highway safety. The proposal would therefore comply with policies T4 and T6 of the LP, policy CP25 of the CS and policies DMD45 and DMD47 of the DMD, which seek the safe use of the public highway for all users.

Affordable Housing

17. Policy DMD1 of the DMD and policy CP3 of the CS require at least 40% of new dwellings to be affordable housing units. Meanwhile, policy H5 of the LP states the target should be a minimum of 35%. The appellant seeks to provide 21 affordable units, which would equate to the 35% threshold in the LP, but below the threshold set locally.
18. I acknowledge that the London Plan was adopted in 2021, some 7 years after the DMD was published and 11 years after the CS was published. The LP forms the most up-to-date part of the statutory development plan, though it does not preclude boroughs bringing forward local plans at variance to the LP where evidence and local circumstances suggest a better approach. A new local plan and emerging policies are not advanced enough to carry weight in this appeal, and I am not presented with any details on any localised circumstances that

may justify a higher amount of affordable housing being provided than the threshold set in the LP.

19. In such instances, conformity with the LP is key, and the appeal development would comply with policy H5 of the LP through its proposed amount of affordable housing. The legal agreement that accompanies the appeal has been endorsed by both parties and I consider it a document fit for the purpose of securing the necessary quantum of affordable housing.
20. On this basis, I find the proposal provides an adequate amount of affordable housing, in compliance with policy H5 of the LP.

Other Matters

21. My attention has been drawn to policy CL6 of the emerging Enfield Local Plan June 2021, which relates to the loss of public houses. Notwithstanding that the Council has not yet adopted this emerging plan, the appeal development would provide a drinking establishment on site and so there would not be any loss of a community facility.
22. Concerns have been raised about the size of the flats, but I note that paragraph 9.29 of the Council officer's report raises no issue in this regard, and I have no substantiated evidence to find otherwise.

Conditions

23. The Council provided a list of conditions with the appeal statement, to which the appellant raised no objection. Notwithstanding, I have considered the use of conditions and have the following comments to make.
24. I have imposed conditions 1 and 2 for certainty as to the nature of the development hereby permitted. Condition 3 is necessary to ensure safe construction without obstruction of the highway.
25. Conditions 4, 5 and 6 relating to contamination are reasonable given the previous and current activities on the appeal site. Conditions 7 and 8 are necessary given the site's location within the flood zone, whilst conditions 9 and 10 would allow sufficient control over the physical appearance of the appeal site. Given that the residential refuse storage is clearly shown on the approved plans, I have only required details of commercial refuse storage to be clarified and shown.
26. Conditions 11 and 12 seek to ensure a sustainably constructed and accessible development. The requirement for the BREEAM rating, combined with the carbon offset contribution within the submitted legal agreement, would negate the need for a further condition requiring carbon efficiencies. In order to provide sufficient regulation over the ground floor commercial unit and to protect the living conditions of future prospective residents, conditions 13 to 16 are necessary.
27. I have not imposed a condition requiring samples of materials since these are readily described within the application and the area has no distinctive palette of materials to follow. Equally, given the location and current topography on site, I do not consider it necessary to require a condition stipulating ground or floor levels.

28. The submitted plans clearly demarcate cycle storage and the written details accompanying the application state all car parking spaces benefit from electric charging points. Given that these are clearly set out in the application documents, I do not consider it necessary to condition the details further.

Conclusion

29. For the reasons given above I conclude that, subject to the conditions in the attached schedule and the submitted legal agreement, the appeal should be allowed.

David Wallis

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1103 S01 Site Plan Existing
 - 1103 F01 Rev14 - 1 bed flat
 - 1103 F02 Rev14 - 2 bed 3 person flat
 - 1103 F03 Rev14 - 2 bed 4 person flat v1
 - 1103 F04 Rev14 - 2 bed 4 person flat v2
 - 1103 F06 Rev14 - 3 bed 4 person flat
 - 1103 F07 Rev14 - 3 bed 5 person flat
 - 1103 F08 Rev14 - 4 bed 5 person flat
 - 1103 F09 Rev14 - 4 bed 6 person flat
 - 1103 GA00 Rev14 - Ground Floor Plan
 - 1103 GA01 Rev14 - First Floor Plan
 - 1103 GA02 Rev14 - Second Floor Plan
 - 1103 GA03 Rev14 - Third Floor Plan
 - 1103 GA04 Rev14 - Fourth Floor Plan
 - 1103 GA05 Rev14 - Fifth Floor Plan
 - 1103 GA06 Rev14 - Sixth Floor Plan
 - 1103 GA07 Rev14 - Site Elevations
 - 1103 GA08 Rev14 - Site Elevations
 - 1103 GA10 Rev14 - Sections
 - 1103 GA11 Rev14 - Roof Plan
 - 1103 GA12 Rev14 - Seventh Floor Plan
- 3) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The statement shall provide for:
 - a) the parking of vehicles of site operatives and visitors;
 - b) unloading and loading of plant and materials;
 - c) storage of plant and materials used in construction of the development;
 - d) measures to control the emission of dust and dirt during construction inclusive of wheel-washing facilities; and
 - e) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 4) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11)

(or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:

- a) a survey of the extent, scale and nature of contamination; and
 - b) the potential risks to, human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, and ecological systems.
- 5) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out before the development is occupied.
- 6) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 7) Prior to first beneficial occupation of the development hereby permitted, a flood evacuation plan shall be submitted to and approved in writing by the local planning authority. Once approved, the plan shall be implemented in accordance with the approved details and retained as such thereafter.
- 8) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- a) provide information about the design storm period and intensity, the method employed to delay and control the surface water

discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

- b) include a timetable for its implementation; and
 - c) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 9) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include:
- a) indications of all existing trees and hedgerows on the land, identifying those to be retained and setting out measures for their protection throughout the course of development;
 - b) all hard surfacing across the site including the vehicle and pedestrian accesses into the site;
 - c) all soft landscaping measures for the site;
 - d) boundary treatments;
 - e) construction and maintenance specifications for the green roofs; and
 - f) the location and any means of enclose for refuse storage facilities associated with the commercial unit.

The landscaping scheme shall be carried out in full accordance with the approved details within the first available planting season following completion of the development and retained as such thereafter.

- 10) No means of external illumination shall be installed on site without first having obtained written agreement from the local planning authority.
- 11) No development shall commence until a BREEAM pre-assessment has been submitted to and approved in writing by the local planning authority. This shall demonstrate how the development will be built to a minimum standard of BREEAM 'Very Good' and how it shall use reasonable endeavours to achieve an 'Excellent' rating. Where a rating of 'Excellent' cannot be achieved the applicant shall demonstrate why this is not technically feasible or economically viable. Prior to the occupation of the approved building, a copy of the Post Construction Certificate verifying that a minimum BREEAM 'Very Good' has been achieved shall be submitted to the local planning authority. The evidence required shall be provided in the following formats and at the following times:
- a) A design stage assessment, conducted by an accredited Assessor and supported by the relevant BRE interim certificate, shall be submitted at preconstruction stage prior to the commencement of superstructure work on site; and
 - b) A post construction assessment, conducted by an accredited Assessor and supported by relevant BRE accreditation certificate,

shall be submitted following the practical completion of the development and prior to first occupation.

The development shall be carried out strictly in accordance with the details approved, shall be maintained as such thereafter and no change shall take place without the prior approval of the local planning authority.

- 12) Not less than 10% of residential units shall be constructed to wheelchair accessible requirements (Building Regulations M4(3)) and the remainder shall meet easily accessible/adaptable standards (Building Regulations M4(2)).
- 13) Prior to first beneficial use of the commercial unit hereby permitted, a delivery and servicing plan shall be submitted to, and approved in writing by, the local planning authority. The plan shall set out how access by service vehicles, including loading and unloading, for the commercial unit shall be managed. The plan shall be implemented in accordance with the approved details upon commencement of the use of the unit and retained as such thereafter.
- 14) Prior to the first beneficial use of the commercial unit hereby permitted, a parking space shall be surfaced, laid out and marked clearly for the sole use of that commercial unit. The space shall be available for use in connection with the commercial unit only and shall be retained as such thereafter.
- 15) Prior to the first beneficial use of the commercial unit hereby permitted, details of all extraction vents, flues, air conditioning and any other external pipework shall be submitted to, and approved in writing by, the local planning authority. The details shall include assessment of any noise emissions related to the use of the apparatus to be installed and detail any necessary acoustic insulation or mitigation required. The approved details shall be implemented prior to the commencement of the use of the unit and retained as such thereafter.
- 16) The commercial unit premises shall only be open for customers between the following hours:

0800 - 2300 Mondays to Saturdays.

0900 - 2200 Sundays and Public Holidays.