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## Appeal Decision

Hearing Held on 17 May 2022

Site visit made on 17 May 2022

**by Stephen Wilkinson BA BPI DIP LA MBA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 July 2022**

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**Appeal Ref: APP/B5480/W/21/3287285**

**Tesco Extra Bryant Avenue, Romford, RM3 0LL**

- 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 Jack Riggs Weston Homes Plc against the decision of the Council of the London Borough of Havering.
  - The application Ref P1190.21, dated 11 June 2021, was refused by notice dated 16 September 2021.
  - The development proposed is phased redevelopment of the site including: relocation of existing hand car wash facility, Click+ Collect Unit and recycling centre; the erection of 87 dwellings and associated development including new vehicular access car and cycle parking, hard and soft landscaping and other associated works, and hard and soft landscaping improvements to the public realm and retained section of the Tesco store car park.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. In advance of the Hearing, I received an application for costs from Weston Homes Plc against the Council of the London Borough of Havering. This application is the subject of a separate decision.

### Procedural Matters

3. Since the date of the Council's refusal, it has adopted a new Local Plan. The Council in its statement of case clarified which of its new policies were relevant to the main issues raised by this appeal. My decision is based on them.
4. As part of the appeal the appellant submitted a series of revised plans which include minor alterations to the ground floor of the appeal scheme. The revisions include a revised layout to both the vehicle and cycle parking and the service bay on Whitelands Way. The proposed alterations both individually and collectively do not result in a material change to the scheme layout. As the revisions had been consulted on through the appeal process, I am satisfied that no parties' interests have been prejudiced or infringed.
5. Furthermore, as part of the appeal, other reports including a Stage 1 Road Safety Audit, Health Impact report, addendum to the Design and Access statement, Urban Design and Placemaking Assessment, Air Quality Assessment and an Active Travel Zone Assessment were submitted. Some of these

documents reflect policies included in the Development Plan comprising the London Plan and the LB Havering Local Plan, both adopted in 2021. Others reflect 'Design', which is a main issue in this appeal. As these were included with the appeal documentation, which was the subject of public consultation, I am satisfied that no parties' interests have been prejudiced or infringed.

6. Although the Council have cited Policy D1 of the London Plan in its first reason for refusal it is unclear how the appeal scheme offends this as this refers to a requirement for area assessments to be undertaken to determine urban character. I have not referred to it in the determination of this appeal.
7. A draft Unilateral Undertaking was tabled during the Hearing. After the Hearing I received a completed Undertaking, dated 10 June 2022 which I address later in this decision.

### **Main Issues**

8. The effect of the proposed scheme on:
  - The character and appearance of the area,
  - The living conditions of future occupiers by reason of outlook, aspect and provision of communal amenity space,
  - Highway safety regarding the provision of parking, servicing and access, and
  - Whether or not the scheme includes the infrastructure necessary, directly required and related in scale and kind to the proposed development.

### **Reasons**

#### *Character and appearance*

9. The site forms part of a large car park comprising 770 spaces serving a retail store. Part of the site is occupied by a click and collect point. Its southern and western boundaries are defined by poorly maintained landscaping and palisade fencing
10. Existing built form and character surrounding the site, varies. To its north and west are industrial and commercial buildings used for workshops, storage and offices. These vary in form ranging from single storey sheds to buildings of up to 3 storeys in height with larger retail and discount stores in the Gallows Corner retail park on the frontages to the A12 Colchester Road, and A127 the South Arterial Road.
11. In contrast to the south is an estate of 2 and 3 storey residential buildings largely comprising single dwellings with some flats. Beyond this is the recently completed residential development on the former Harold Wood Hospital site comprising dwellings with small blocks of flats of up to 4 storeys.
12. The appellant states that the appeal scheme is an appropriate design response to its location and would act as a 'transition', given the contrasting form, massing and scale of the industrial/commercial units and the residential development. Both parties agree that the scheme represents an example of the 'new London vernacular', characterised by a design led approach to optimising densities referred to in Policy D6 of the London Plan. However, the difference

between the main parties is whether the form of development is appropriate for this site.

13. I acknowledge that the area does not have a particularly distinctive character given the range of land uses which give effect to a varied pattern of development. In this context the appellant has sought to explore a new arrangement and to create a new identity.
14. The proposed scheme is a single development comprised of perimeter blocks, varying in height from 3- 4 storeys with a fifth floor tower located at its north west corner. A central podium at first floor level includes communal space beneath which would be 87 parking spaces and 162 cycle spaces.
15. The appeal scheme would sit tightly within its boundaries on its northern and eastern sides with minimal landscaping but includes a footway along its northern edge. In contrast, the building would be set back by around 6.5m and 7.5m from the Bryant Avenue and Whitelands Way frontages. This allows modest gardens serving the duplex apartments with areas of semi private space.
16. The building's elevational treatment has been designed as a series vertical grids, to reflect the form of the industrial units along Bryant Road and to a degree the form of housing lying to the south of the site. In plan form, along the two principal frontages, it would have a stepped building line with recessed window bays, allowing projecting and partially recessed balconies. There would be contrasting panels of brickwork, some of which are textured and there are glazed areas within each elevation.
17. Chamfered corners assist in turning the building from Bryant Avenue to both Whitelands Way and also to the western access to the retained parking areas serving the store. Some of the detailed features are drawn from the typology of local buildings such as the use of polychromatic brickwork at Harold Wood Station.
18. Whilst the elevational treatment of the principal frontages demonstrates a degree of contrast, there has been only a minimal attempt to address the walls at ground floor on the eastern and northern elevations which would face onto the retained areas of parking. The eastern elevation would be completed with contrasting brick panels at the ground floor level.
19. The Development Plan includes a series of policies which in summary encourage the development of brown field land and the optimisation of density through a design led approach. However, the policies also require that design should reflect local distinctiveness and character. Common to policies D3 of the London Plan and LP26 is a recognition that high quality design contributes to the creation of successful places. Although there is a common thread within these policies in support of higher densities, this is balanced with the requirement that new development should respect the established scale, massing and rhythm of existing built form to reflect its surrounding context. Furthermore, development should integrate with existing path and circulation networks (Policies D3 and LP3).

20. The appellant cites guidance included in the National Design Guide<sup>1</sup> and the National Planning Policy Framework<sup>2</sup> (the Framework) which states that in the absence of clear character or identity then it may be necessary to give significant weight to outstanding or innovative designs but only so long as they fit in with the overall form of their surroundings.
21. I acknowledge the challenges of designing a scheme which addresses the Development Plan's policy requirements bearing in mind the physical context of this site. The appeal scheme would be an improvement on the large area of parking, the 'Click and Collect' buildings and the quality of the existing boundary treatment by providing greater definition to Bryant Avenue.
22. However, the scheme's form, scale and massing is significantly different from its context and would not comply with these policies. Through almost 100% site coverage, it would introduce another element to the townscape starkly at variance with its surroundings. There are insufficient elements included in the scheme which allow identification with the character of surrounding areas.
23. It would be highly visible not just from along its principal frontages but from those areas of the access road and bus station located to the east. From these sides the scheme would have limited visual interest. The appeal scheme would sit as an incongruous feature, and rather than adding to the visual interest of the locality would detract from it.
24. The scheme's varied elevational treatment is insufficient to provide interest and break the massing of the block. The appellants desire for site optimisation results in a building which does not allow the 'transition', which they aspire it to achieve between the varied elements of the surrounding townscape.
25. Overall, the appeal scheme would not relate well to its surroundings. For this reason, it would result in harm to the character and appearance of the area. For these reasons, I conclude that the appeal scheme conflicts with Policy D3 of the London Plan and policies LP3, LP7 and LP26 of the Havering Local Plan.

#### *Living Conditions*

26. The difference between the main parties on this issue relates to outlook and aspect and the quality and amount of communal amenity space.

#### *Outlook and Aspect*

27. In respect of the first issue, 33% of the total units are single aspect. London Plan Policy D6 and Policy LP7 requires that these should be avoided unless exceptional circumstances can be demonstrated. The appellant cites the Council's housing supply position as evidence that the site's development needs to be fully optimised; this has resulted in the need for compromise on this aspect of the scheme's design<sup>3</sup>.
28. However, I do not regard the appellants justification as sufficient to warrant the large amount of single aspect units in a new build scheme located on a flat site free of constraints where the compromise simply reflects the exigencies of design. Whilst Policy D6 allows single aspect units, subject to a range of criteria, it recognises that they should be an exception within the layout of new

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<sup>1</sup> Paragraphs 54 and 58

<sup>2</sup> Paragraphs 124d) and 130c) and 134b)

<sup>3</sup> Planning Statement, paragraphs 6.35-6.38

- buildings and not form a large proportion of the overall number of units as in this scheme.
29. The appeal scheme would be surrounded by the retained parking areas on its north and eastern sides and the industrial/commercial uses along Bryant Avenue.
  30. Policy D6 of the London Plan requires that the design of individual dwellings should be orientated to optimise opportunities for visual interest through a range of immediate and long term views<sup>4</sup>.
  31. The site's northern edge would be separated from the access road to the store by a footway with some landscaping and from the parking areas to the east by a narrow landscaping strip. Despite the set back of the properties at first floor level within the scheme, flats facing due east and those due north would be faced with an unattractive and unappealing environment over an expanse of tarmac. This is a matter recognised by the appellant<sup>5</sup>. The balcony strategy, designed to diffuse views, the proposed landscaping strips and the existing narrow landscaping areas within the car park are insufficient to break the monotony of tarmac.
  32. Whilst there are no single aspect flats with a northern aspect there are a large number of windows, primarily serving bedrooms which would face the access road and car park beyond. There would be, however, a number of single aspect units which face due east over the retained parking area.
  33. For these reasons, the outlook of the flats on the east and northern elevations of the appeal scheme conflict with Policies D6 of the London Plan and Policy LP7.

### *Communal Space*

34. Communal space would be provided at podium level and the 3<sup>rd</sup> floor roof space facing Whitelands Way. The scheme includes a total of 1,084sm of communal outdoor space in the form of landscaped areas at podium and third floor roof levels.
35. I recognise that the Council draws for much of its case on the Mayors Guidance<sup>6</sup> on the specific requirements for communal space which have informed the Council's decisions since its adoption in 2010. The requirement for play space for 87 units is 509sm although 552sm has been provided.
36. There is no standard for communal space in the Development Plan and the appellant has provided evidence of lower ratios of communal space per head in recent schemes granted permission by the Council based on the same Mayoral Guidance. Whilst I cannot comment on the detail of these schemes it is evident there is no clear standard required for communal space.
37. The Council question the quality of this space and whether it could effectively cater for all groups. Reference was made to a report, prepared as part of the evidence base for the new local plan on open space provision, which identifies the site as lying within an area of open space deficiency. However, I am satisfied that since 2016, new spaces have been developed which could

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<sup>4</sup> Table 3.2 of the London Plan

<sup>5</sup> Design and Access Statement p.104

<sup>6</sup> Shaping Neighbourhoods Play and Informal Recreation SPG 2010

adequately provide alternative space for the recreational needs of the residents of the proposed scheme.

38. Given that there is an absence of standards for communal space there is no conflict with the policies.
39. To conclude on this main issue, I am satisfied that the amount and quality of communal open space within the scheme is in accordance with Mayoral Guidance and does not conflict with the Policy D6 and LP7. However, the determinative matter on this main issue is the adverse impact on living conditions of future occupiers given their outlook from windows on the northern and eastern elevations towards the parking areas. For these reasons, I conclude that the appeal scheme would adversely impact on living conditions of future occupiers and conflicts with those aspects of Policy D6 and LP7 which seek to protect living conditions.

#### *Highway safety*

40. There are 2 matters related to this main issue in respect of whether the retained parking areas would be sufficient to serve the store and whether the appeal scheme includes sufficient parking with regard to adopted standards.
41. In respect of the first, the proposed store includes 777 parking spaces. This is in excess of the 290 parking spaces which adopted standards now require. However, the scheme would retain 588 spaces (although this would be reduced during the construction period to 515 spaces). A series of parking surveys completed by the appellants, with the appeal site area out of bounds to shoppers, indicates that even on peak times in the weeks leading to Christmas (a survey weekend at the end of November), the retained parking areas would still have sufficient capacity to support the operation of the store. Even during the construction period the retained parking areas would only marginally fail to cover.
42. In contrast, whilst the Council made reference to its own surveys, during the Christmas period, this evidence was not presented during the Hearing.
43. For these reasons, I am satisfied that the permanent loss of just under 200 parking spaces from the existing car park would not result in congestion on surrounding streets resulting from overspill parking. These streets are the subject of various parking restrictions which in themselves are a deterrent for on street parking.
44. In respect of the number of parking spaces provided within the scheme there is an inconsistency between the approach adopted by the Council and the GLA. The former adopts a minimum standard of spaces per dwelling and the latter a maximum of 1.5 spaces. This reflects the GLA's policy of restraint in favour of alternative modes of transport to deliver the Mayoral targets whilst the Council requires more spaces reflecting the site's low PTAL<sup>7</sup> rating of 1b and an assumption that past trends in car ownership growth will continue.
45. The Council considers that there would be a shortfall of just over 40 parking spaces although this is not evidenced and the actual provision would be in excess of the standards required by Policy LP24. The scheme would comply with policy LP24.

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<sup>7</sup> Public Transport Accessibility Level



46. The scheme includes 87 parking spaces and 162 cycle parking bays. This amount of parking, whilst adhering to the GLA standards supported by Policy T6 is balanced with the provision of the cycle parking as required by the other policies included in the London Plan.
47. The appellant has provided a community facilities audit which indicates that a number of services are located within a short distance which would enable access on foot and by bike. Accordingly, the location of the scheme would allow access by alternative modes of transport to local services.
48. I recognise the concerns raised by interested parties on the impact of the traffic generated by 87 dwellings at the site. However, neither the Council or TfL<sup>8</sup> have raised concerns over the capacity of the local road network to cope with the increase in traffic during peak periods.
49. Given the number of vehicle and cycle parking spaces provided, I am satisfied that the scheme would comply with parking and highway policies included in the Development Plan. Although the Council did request a comprehensive survey of the existing store the information which the appellant has provided allows for an understanding of this site's parking requirements.
50. Furthermore, the combination of parking and cycle parking complies with London Plan Policies T1B, T2, T3, T4 and T5 which require new development to be appropriately located to mitigate impacts on London's transport network and reduce the dominance of the car. The scheme would comply with Paragraph 105 of the Framework which seeks to create the right conditions for the use of alternative modes of transport.
51. Furthermore, London Plan T7 requires that servicing and the proposed access arrangements are fit for purpose. The revised plan submitted with the appeal for the proposed service layby located on Whitelands Way has appropriate sight lines. The Stage 1 Safety Audit confirms that highway safety would not be prejudiced as required by the Mayors Vision Zero guidance.
52. For these reasons, I conclude that the appeal scheme does not conflict with Development Policies T1, T2, T3, T4, T5, T7 and LP24.

### *Infrastructure*

53. The Framework confirms that planning obligations should only be sought to mitigate the effects of unacceptable development therefore making it acceptable. The Framework in paragraph 57 and CIL Regulations 122 set out 3 tests for planning obligations. They must be necessary to make the development acceptable in planning terms, be directly related to the development and fairly and reasonably related in scale and kind to the development.
54. A Community Infrastructure Levy compliance statement submitted by the Council concludes that the obligations included in the Unilateral Undertaking meet the tests of the Framework and CIL Regulations. However, as I am dismissing the appeal for other substantive reasons, it is unnecessary for me to consider this matter further.

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<sup>8</sup> Transport for London

## Planning Balance

55. Both parties acknowledge that the Council cannot demonstrate a 5 year housing land supply (HLS) of deliverable housing. I understand that housing delivery in preceding years has not met Government targets. The HLS position is confirmed in the Examining Inspector's report into the recently adopted plan which requires its early review. In these circumstances, paragraph 11(d)ii and footnote 8 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.
56. 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 219 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.
57. I regard those policies identified in the Council's reasons for refusal as the most important for the purposes of determining this appeal.
58. Policies D3 and D4 of the London Plan and Policies 3, 7 and 26 of the Local Plan are consistent with the general principles which underpin the Framework's design policies included in Chapter 12. Specifically, Paragraph 130 advises that planning decisions should establish a strong sense of place using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live and that new development is sympathetic to local character. The requirements included in Policy D4 which require site optimisation are consistent with Paragraph 120 of the Framework which supports the development of under used land.
59. Policies D6 and LP7 are consistent with Paragraph 119 of the Framework in requiring that new development should improve the environment and ensure safe and healthy living conditions.
60. Whilst there is an extant permission for the change of use of 54 parking bays to an Auto Centre, Auto windscreens, glass and repair and body repair centre on part of the appeal site, its design would be of a modest scale when compared to the appeal scheme and reflects the character and use of the sites along the west side of Bryant Avenue.
61. The appellant has prepared a brief addressing the job opportunities and value generation resulting from the delivery of the appeal scheme<sup>9</sup>. This identifies that the scheme represents £17.16m capital construction costs resulting in the creation of around 45 construction jobs each year for 2 years which could be drawn from the local population. A further 51 indirect and induced construction jobs would be likely to be generated each year during the construction period. Additionally, there would be around £10.3m of gross value added over the construction period. The scheme would generate additional spending power in local shops and services from the new households. In this respect alone the

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<sup>9</sup> File 6 document 11i



- scheme would contribute to the economic objectives of sustainable development.
62. However, it should be noted that these advantages require to be tempered to some degree when set against the development of the fall back position, the autostore, which the appellant has indicated could be developed if this appeal is dismissed.
63. I recognise that the scheme would result in a policy compliant amount of affordable housing with a dwelling mix which meets adopted policies. This could in part address the under supply in housing land. Despite the site's PTAL level, it is generally well located in relation to jobs and services. This would address the social objective of sustainable development.
64. Furthermore, it would involve redevelopment of previously developed land and would address the environmental dimension of sustainable development.
65. Balanced against these matters is the design of the scheme. This would be a large block almost filling the whole site. It would be unrelated in scale and massing to its surroundings. It would dominate the immediate area with views from along both Bryant Avenue and Whitelands Way. Its scale should be contrasted with the modest scale of the 'fall back' position highlighted by the appellant
66. The elevational treatment of its northern and eastern sides are poorly articulated but would be highly visible from across the retained areas of car park and bus station. In this respect it would adversely impact on the area's character and appearance and would not deliver on the environmental objectives of sustainable development,
67. Furthermore, the scheme's design includes a significant number of single aspect flats. This, together with the large number of flats with a poor outlook over the retained parking areas and the access road would lead to an adverse impact on living conditions for future occupiers. This aspect of the scheme would not deliver on the social objective of sustainable development.
68. Although the scheme represents an attempt to optimise density with a design led scheme its failings against policy are due to the exigencies of its design which is not appropriate for this site. The requirement for additional housing units, required to address shortfalls in the land supply, should not compromise the drive for design quality or the protection of the living conditions of future occupiers.
69. 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.
70. 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

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                                                     |                                     |
|-----------------------------------------------------|-------------------------------------|
| Victoria Hutton                                     | Of Counsel                          |
| Mike Lowndes BA (Hons) MSc,<br>Dip Cons (AA), MRTPI | Senior Director, Litchfields        |
| John Russell BEng, (Hons),<br>CMILT, MIHT           | Director, Motion Consulting         |
| Mark Smith BA (Hons)                                | Senior Design, Manager Weston Homes |
| Jack Riggs BA (Hons)                                | Planner, Weston Homes               |
| Andy Boucher                                        | Development Manager, Tesco          |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                             |                         |
|-----------------------------|-------------------------|
| Victoria Collins MTP        | Senior Planning Officer |
| Huw Travarrow RIBA BSc Arch | Senior Design Officer   |
| Neil Goate                  | Head of Planning        |
| Massood Karim               | Highways Engineer       |

### **INTERESTED PERSONS:**

|                    |             |
|--------------------|-------------|
| Greg Bennett       | Resident    |
| Resident           | Resident    |
| Sharon Heron       | Resident    |
| CLlr Brian Eagling | LB Havering |