
Appeal Decision

Site visit made on 18 January 2023

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 February 2023

Appeal Ref: APP/N1540/W/21/3287500

Amberry Court, Harlow, CM20 2PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Can Prop Ltd against Harlow District Council.
 - The application Ref HW/FUL/21/00434, is dated 28 July 2021.
 - The development proposed is external works including 54 car parking spaces, 30 cycle spaces, new playground area and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An appeal against non-determination of the application was made on 22 November 2021. At that point, jurisdiction passed to the Secretary of State. The Council nevertheless states that it 'refused' the application on 15 December 2021 but the reasons given can be taken to be its objections.
3. An application for prior approval for 30 new flats above the three existing blocks is the subject of another appeal (Ref: APP/N1540/W/21/3284423). Whilst both appeals will be considered separately the potential for additional accommodation to be provided at Amberry Court is a material consideration.

Main Issues

4. These are:
 - The effect of the proposed development on open space provision;
 - The effect on the living conditions of the occupiers of the ground floor flats in Block 2 with particular reference to privacy; and
 - The risk of surface water flooding.

Reasons

5. The appeal site contains three blocks containing 36 flats. There is no allocated parking but there are 14 unallocated spaces. The 15 garages in the north-east corner were sold off previously. The proposal makes provision for 54 parking spaces in total. The majority of these would be in a central 'court' between Blocks 2 and 3. There would also be a row to the west of Block 2. The remainder would be laid out along the access road and adjoining Block 1.

6. As part of the proposal a playground area of 400 sq m would be laid out to the south of the central parking area. Provision would also be made for cycle storage and electric vehicle charging points.

Open space

7. Policy PL6 of the Harlow Local Development Plan establishes that development on Other Open Spaces must meet various criteria. Other Open Spaces vary in nature and quality but can include amenity spaces, areas of land between buildings and informal recreation areas. The land to be developed for parking and the playground is grassed with a few individual trees and falls into this category. Therefore the policy is relevant.
8. Photographs show that some areas have been used for parking despite the crash barriers erected. However, this was not taking place when I visited and there were no obvious signs of recent occurrences. There is nevertheless no evidence that the proposal would remove access to an open space which is of high quality or of high public value in providing opportunities for sport and recreation. Neither would it prejudice the potential for comprehensive development of adjacent land.
9. When judged against criterion (a) of Policy PL6 the area concerned does not have a strong landscape character. There is also no indication that it has any biodiversity value. The extent of hard surfacing and the parking of cars would lead to a loss of openness but any development of open space is likely to reduce openness and the effect would not be significant.
10. Sir Fredrick Gibberd's masterplan for Harlow envisaged the district to be interspersed with many open spaces to offset the provision of small private gardens. Here the open space is communal but the original urban design principle of providing a spacious setting for the residential accommodation would nonetheless be compromised due to the extent of the proposed hard surfaced areas. There would be a conflict with Policy PL6 in this respect. Whilst the extensive Town Park is nearby this does not change the negative impact the proposal would have on the concept of surrounding the blocks with a generous green area.
11. The National Planning Policy Framework promotes healthy and safe communities. Reference is made to the provision of safe and accessible green infrastructure and to planning positively for the provision and use of shared spaces. One resident refers to the lawn as a private communal garden and a place where residents can greet each other, sit out in the fresh air, play games and picnic during the summer. This might not be the view of all those at Amberry Court but the central area in particular is something of a green 'oasis' that is likely to contribute positively to well-being.
12. The proposal indicates landscaping of the residual areas but these would be of limited width in the centre and any planting would not compensate for the loss of the existing open area. The surfacing of the playground would also detract from the central green expanse and its provision would not alter the adverse impact. Development at Tanyard Close may have taken place with no meaningful open space but Amberry Court does have a large area of Other Open Space which is beneficial as a setting for the buildings and for the enjoyment of residents.

13. Therefore the loss of open space proposed would have a harmful effect on its provision contrary to the urban design principles for Harlow and to the detriment of the well-being of residents. There would be conflict with Policy PL6 and the design principles in Local Plan Policy PL1 would also be prejudiced.

Living conditions

14. Fifteen of the proposed spaces would be in close proximity to habitable rooms in the ground floor flats of Block 2. They would be divided by a planter and a narrow strip of land. However, such an arrangement is not entirely unusual. Furthermore, drivers are not likely to linger long in their vehicles and so infringe the privacy of those residing in these flats. There would be no conflict with the amenity principles for development in Local Plan Policy PL2 as the living conditions of those occupiers would not be harmed.

Surface water flooding

15. The hard surfaced areas are proposed to be finished in tarmac and surface water is intended to be managed with a system of soakaway and storm attenuation crates. The Council objects on the basis of insufficient information. Local Plan Policy PL11 establishes that development proposals should identify how there is sufficient surface water capacity to serve it.
16. The western parking area would be very close to 37-44 Amberry Court (which is outside the appeal site) and at a higher level. There is therefore the possibility that excessive surface water run-off could lead to waterlogging, flooding or damage to the adjoining building. It may be that a suitable technical solution could be devised to avoid this and a condition could be imposed to agree a scheme. However, there is limited detail in this respect. Indeed, because of the extent of the proposed hard surfacing in this part of the site and the relationship with Nos 37-44, greater assurance of a workable system is required in line with Policy PL11.
17. Therefore the proposal would not comply with Policy PL11 and there would be an unacceptable risk of surface water flooding.

Other considerations

18. It is clear that the paucity of parking provision at Amberry Court is a real problem for residents. The proposal would address this and so would be a significant benefit by ending any unsightly, uncontrolled parking as well as any stress over the issue. However, based on data from the 2011 census, the car ownership ratio per flat in this area is 0.61. Whilst this information is now somewhat dated, it has not been disputed by the Council and no alternative figure is put forward. Indeed, it seems likely that not all residents would be car owners given that the town centre is nearby. It provides a more realistic gauge of demand than the historic County Council standards.
19. The implication is that the existing flats would realistically generate a demand for 22 car parking spaces plus some allowance for visitors and deliveries. Indeed, the draft unilateral undertaking put forward by the appellant allocates 28 spaces for the development. Therefore, the proposal over-provides the number of spaces that would reasonably be required. This may act as a disincentive for residents to use sustainable transport modes contrary to the aims of the Framework. It also means that more of the undeveloped area than is necessary would be given over to car parking.

20. The proposal also seeks to make parking provision for the 30 additional flats which are the subject of the prior approval appeal. In this way, it would potentially unlock the opportunity to deliver additional housing consistent with the Government's objective to significantly boost the supply of homes. But even taking those units into account, the level of parking provided would be excessive as applying the ratio would equate to a need for 40 spaces plus visitors. So whilst the proposal would beneficially address the existing parking issue and make provision for further development, this is tempered by the indication that more green areas would be lost than is actually required.
21. There is no formal play provision at Amberry Court. This would be addressed by providing a large, well-equipped area in line with Policy PL2 which refers to high quality and useable amenity space. Details of this could be secured by condition. However, as the nearby Town Park is easily accessible the benefits associated with the play area would not be that great.
22. Concerns are raised about security in the playground and whether it would become a magnet for anti-social behaviour given its location close to First Avenue. It is unclear what a management condition would achieve in this respect. Nevertheless, although the views of the Designing Out Crime Officer are unknown, there is no strong evidence that the playground would be likely to create any issues.
23. The proposal also includes electric vehicle charging points and 30 cycle storage racks. Both of these would promote sustainable transport in line with the Framework. A lighting scheme would also be included. Issues about glare could be resolved by condition and discrete illumination would be likely to improve safety and security within the site.

Other Matters

24. The re-generation of Amberry Court appears to have broad support amongst existing residents. However, some refer to a lack of consultation about the proposals. Whilst this is not decisive as a planning consideration, it may have enabled any scheme to have been more closely shaped by the particular needs and circumstances of those who live there now.
25. The appellant has explained the rationale for splitting the prior approval and planning applications. The Framework encourages local planning authorities to approach decisions on proposed development in a positive and creative way. Nevertheless, the approach of the parties is not, in itself, a matter that affects the outcome of this appeal.

Final balance

26. The proposal would have a harmful effect on the provision of open space which is protected by Policy PL6. Furthermore, the loss of a large swathe of greenery would have a negative effect on the health and well-being of residents. This would not be compensated for by the provision of a playground. It is not clear that an unacceptable risk of surface water flooding could be avoided.
27. The original intentions behind the disposition of buildings and spaces in Harlow should not be permanently fixed but may evolve over time as the needs of people and places change. In this respect, there is an existing parking issue which would be addressed by significantly increasing on-site spaces. However, the proposal does not strike the right balance between parking and the

retention of soft, undeveloped areas. The amount of hard surfacing is more than is necessary to meet existing parking demands and so this reduces the positive weight to be given to this aspect of the proposal.

28. The scheme is also intended to serve the additional flats that are subject to a prior approval appeal and could be linked by condition. The potential delivery of 30 extra flats counts in its favour. However, there would also be an over-provision of parking for the proposed and existing flats and this reduces the weight to be attached to this matter. The play area is a benefit of limited weight. Cycle storage, charging points and lighting would conform to Government policies on transport and safety. However, the weight to be given to these aspects is limited as they could also be provided in conjunction with a layout with fewer parking spaces that retained more undeveloped areas.
29. Without the prior approval scheme the appellant maintains that it would not be possible to alleviate the pressing need for many residents to pay significant service charges. Dismissing this appeal may have a 'knock-on' effect that would prevent that scheme from proceeding. However, that does not provide a compelling reason to allow this appeal especially when scope would appear to exist for a development that avoids the objections identified.

Conclusion

30. There are no material considerations which indicate that the appeal should be determined other than in accordance with the development plan. Therefore, for the reasons given, the appeal should fail.

David Smith

INSPECTOR