



Appeal Decision

Site visit made on 21 February 2023

by Jo Dowling BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 MARCH 2023

Appeal Ref: APP/B5480/W/22/3295360

Horizon House, 5 Rainham Road, Rainham RM13 8SP

- 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 Lidl Great Britain Limited against the Council of the London Borough of Havering.
 - The application Ref P0543.21, is dated 19 March 2021.
 - The development proposed is demolition of existing building and erection of new discount foodstore (Class E) with access, car parking, landscaping and associated works.
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Decision

1. This appeal is dismissed.

Procedural Matters

2. The Council adopted the Havering Local Plan 2016-2031 (the Local Plan) in November 2021. This replaced the Core Strategy and Development Control Policies Development Plan Documents (2008). Whilst both parties have made reference to the previous policies, I have considered the proposal against the policies contained within the Local Plan as this is the up-to date development plan for the purposes of the National Planning Policy Framework (the Framework).

Main Issues

3. The main issues are:
 - the principal of the development;
 - the effect on the vitality and viability of nearby district and local centres;
 - whether the proposal would impact on a protected species (bats) and deliver an element of biodiversity net gain;
 - the effect on living conditions of neighbouring properties with particular reference to outlook, privacy, noise, daylight/ sunlight and air quality; and
 - the effect of the proposal on highway safety.

Reasons

4. Horizon House comprises a large part single, part one and half storey 'U' shaped collection of buildings that has been subdivided into a number of small

units which are let to a variety of uses including a mechanics, a butcher, a window and conservatory company and a construction company. At the time of my site visit I observed that a number of the units were vacant. The site currently has two vehicular access points. The main access is located immediately adjacent to the egress to the La Salette primary school car park. A second access is located adjacent to No 9/ 9a Rainham Road and leads to a smaller service yard.

5. The surrounding area is predominantly residential albeit to the south and southwest there are a variety of non-residential uses including a school, social club, church and public house.
6. The site is not allocated for any particular use in the Local Plan nor does it fall within a metropolitan, district or local centre as defined by the Local Plan.

Principle of development

7. Policy 3 of the Local Plan sets out the Councils approach to delivery of housing. It advises that to ensure an adequate supply of housing the Council will encourage, amongst other things, the reuse of previously developed land, mixed use schemes and prioritising all non-designated land for housing when it becomes available.
8. I agree with the Appellant that as worded policy 3 does not preclude non-designated land, such as the appeal site, being used for non-residential schemes. However, it does seek to optimise the use of non-designated sites by promoting mixed uses. I note that following pre-application advice the scheme was amended to enable the retention of the residential units 9/ 9a and 11 Rainham Road. Furthermore, I accept that the Appellant considered, but subsequently dismissed, the possibility of incorporating a residential element within the proposed development as it considered that the number of units would be limited and would adversely add to the bulk and height of the proposed store.
9. Whilst I agree that the opportunities to amend the proposed layout to incorporate residential elements appear limited, I consider that this may in part be due to the Appellants wish to use a standardised retail format and to optimise parking at the site. I am therefore not convinced, without the benefit of further evidence, that all alternatives that could make the most effective use of the site have been fully explored. As a result, I consider that the proposal would be contrary to policies 3 and 13 of the Local Plan and policy H1 of the London Plan, the spatial development strategy for Greater London (2021) (the London Plan) which presumes against low density/ single use retail schemes which do not optimise the development proposals of the site.
10. Finally in support of the principle of development, the Appellant advocates that the buildings as they currently exist could deliver a similar quantum of retail floorspace and as such a fallback position exists. However, in order to establish the validity of a fallback position it is necessary to first establish that there is a greater than theoretical possibility that the fallback position may take place.
11. No evidence such as a Lawful Development Certificate has been submitted to demonstrate that if the appeal were to be dismissed that the existing floorspace is Class E and could be used for retail. Furthermore, I consider that

even if the units could be used for retail purposes that it is unlikely in their current format that they would be occupied by a single retailer and used in the way proposed by the current scheme. As a result, I consider that there is not a greater than theoretical possibility that the fallback position would take place and as such I can only give it very limited weight in coming to my conclusions.

Effect on vitality and viability of nearby district and local centres

12. Paragraph 87 of the Framework and policy 13 of the Local Plan require the application of the sequential test for planning applications for main town centre uses which are not in an existing centre. In addition, both the Framework¹ and policy 13 require the submission of an impact assessment.
13. The area used by the Appellant for the sequential test is tightly defined based on a seven-minute travel time by car and on its experience that the type of food store proposed provides a neighbourhood shopping facility. The Council however considered that given the low density residential urban grain of the locality and the location of existing larger food stores that a wider catchment area, based on a ten-minute travel time by car, should be used. I consider that given the specific characteristics of the location identified by the Council and confirmed by my visit to the area that the Council were reasonable to request a wider catchment area be considered for the purposes of the sequential test.
14. Notwithstanding this I have carefully considered the three alternative sites closer to but not within Rainham town centre which were considered and discounted by the Appellant. I am satisfied based on the evidence before me and having inspected the sites that they are either not suitable and/ or unlikely to be available within a reasonable period. However, for the reasons set out in the paragraph above and based on the evidence before me, I cannot be satisfied that the sequential test is satisfied.
15. Paragraph 91 of the Framework advocates that where an application fails to satisfy the sequential test **or**² is likely to have a significant adverse impact on one or more of the considerations in paragraph 90, it should be refused. As a result, I consider that despite the findings of the impact assessment the proposal would be contrary to policy 13 of the Local Plan, Policy GG1 of the London Plan which promotes the crucial role of town centres and the advice contained within the Framework.

Effect on a protected species and biodiversity net gain

16. The Appellant has identified that there is the possibility that there may be bat roosts on the site. Bats are a European protected species (EPS) consequently, it is an offence to destroy their breeding and resting places (even when bats are not present). I accept that the presence of bats does not necessarily prevent development provided adequate measures are taken to avoid disturbance and loss of roosting opportunities. A bat survey would confirm whether bat roosts exist and assess any appropriate measures to avoid and/ or mitigate any negative effects. As no bat survey has been provided, the Appellant has suggested that such a matter could be managed post consent by using a suitably worded condition.

¹ Paragraph 90

² Author's emphasis

17. I note the Frameworks³ advice about using conditions to make unacceptable development acceptable. However, I am also aware that bats can be adversely affected by both light and noise. As a result, if bats are present at the site this might require changes to the layout, result in the need to impose further conditions over the location of lighting or hours of use or require the provision of compensation offsite. As the possibility to make such changes or impose such conditions post consent would be very limited, I consider that without a bat survey I cannot be assured that the proposal would not adversely affect an EPS.
18. Paragraph 174 of the Framework seeks to enhance the local and natural environment by amongst other things providing net gains for biodiversity. The Appellant considers that this could also be dealt with by using a suitably worded condition. However, I consider that the proposed layout would provide very limited opportunities for planting or enhancements to be provided on-site. Whilst the Planning Practice Guidance⁴ acknowledges that biodiversity net gain can be provided off-site this would need to be secured through a planning obligation. I therefore consider that the use of a condition to secure biodiversity net gain would not be appropriate.
19. The proposal would therefore be contrary to policy 30 of the Local Plan and policies G5 and G6 of the London Plan which seek to increase the quantity and quality of biodiversity, require urban greening to be a fundamental element of building design and aim to secure biodiversity net gain.

Effect on living conditions

20. I observed on site that the existing buildings are built either on or very close to the boundary with residential properties in New Zealand Way and Dominion Way. Whilst I accept that the breezeblock and concrete façade is not particularly attractive, as most of the buildings along these boundaries are single storey the impact on the living conditions in terms of outlook and sunlight and daylight is relatively limited. Furthermore, due to the current courtyard arrangement noise and disturbance from the uses and vehicles manoeuvring within the site is limited.
21. The proposed new building would be located in the southwestern corner of the site adjacent to the non-residential uses. Whilst this would place the proposed building and delivery bay as far as possible from the surrounding residential properties the remainder of the site would be opened up and used for parking and circulation.
22. I accept that the use of appropriate boundary treatment would provide some attenuation for vehicles manoeuvring close to the boundary of the site. However, I consider that it would be less successful in mitigating the noise and disturbance of people entering and exiting their vehicle, loading their vehicles, pushing trolleys to and from the store, moving around the site etc.
23. Furthermore, I observed on site that the rear elevation of No 9/ 9a Rainham Road has several windows at ground floor which currently look directly out onto a small service yard. Under the appeal proposals this area would be used for cycle parking and access. I consider that given the proximity of these windows to the proposed cycle parking and access that the living conditions and privacy

³ Paragraph 55

⁴ Paragraph 022, Reference ID: 8-022-20190721

of the occupiers of this property would be adversely affected by the noise and disturbance of people using the cycle parking and vehicles entering and exiting the car park. In coming to this conclusion, I have accounted for the current use, layout and the proposed boundary treatment. However, given the size of the current service yard it can only be accessed by a limited number of vehicles, and it serves a small number of units. As a result, I consider that activity levels even at full occupancy would be relatively limited compared to those that would result from the proposed development.

24. Finally, whilst the proposed development would be set back from the rear boundary of the site and be constructed of better-quality materials than the existing buildings the proposed building would be noticeably larger in bulk, mass and height. As a result, whilst I agree that the proposed new building would not affect sunlight and daylight to the properties in New Zealand Way, I do consider that it would have an adverse impact on the outlook from these properties and would appear out of character in a predominantly residential area.
25. I therefore consider that the proposal would adversely affect the living conditions for the occupiers of neighbouring properties contrary to Local Plan policy 7 which seeks to protect the amenity of existing residents by preventing unacceptable outlook and levels of noise, vibration and disturbance.

Highway safety

26. Neither party dispute that the number of parking spaces proposed would be more than that required by Policy T6 of the London Plan. However, Policy T6(L) also indicates that some flexibility may be applied where retail sites are developed outside of town centres in areas which are not well served by public transport. Based on the evidence contained within the Transport Assessment and from what I observed on site I am satisfied that in this case the number of parking spaces proposed would be appropriate to serve the type and size of store proposed. Furthermore, by providing the amount of parking proposed on-site I am satisfied that overspill parking on the surrounding road network would be unlikely. As a result, I do not consider that it would be necessary to impose parking restrictions in this area to mitigate the impact of the proposal.
27. I accept that this results in a scheme that appears to be highly car focused. However, whilst the site could potentially be more permeable to non-motorised users particularly from the south, pedestrians would be able to access the site via a segregated access that would lead them directly to the store entrance. In addition, cycle parking would be provided near the store entrance and in excess of that required by Policy T5 of the London Plan. As a result, based on the evidence before me I am satisfied that the site would be safely accessible by both pedestrians and cyclists.
28. The proposal would result in an increase in traffic movements. However, I am satisfied, based on the evidence submitted and subject to the relocation of the bus stop outside of the Albion Public House, that these could be absorbed onto the road network without adversely affecting traffic flows or highway safety. Furthermore, I am satisfied on the basis of the revised access arrangement drawings that the proposed radii would be sufficient to enable articulated vehicles to safely enter the site.

29. As a result, I consider that the proposal would comply with policy 23 or the Local Plan which supports the safe and efficient use of the highway and advocates that adverse impacts on the transport network are to be avoided or, where necessary, mitigated.

Conclusion

30. In conclusion for the reasons outlined above I am not convinced without the benefit of further evidence that the proposal would make the most effective use of the site nor that the sequential test is satisfied and that alternative locations either within or on the edge of existing centres do not exist. In addition, I consider that the proposal would adversely affect the living conditions of the occupiers of adjoining residential properties due to noise and disturbance arising from the proposed use and a loss of privacy and outlook. Finally, I cannot be satisfied that the proposal would not adversely affect an EPS or deliver the net gain for biodiversity required by the Local Plan and the London Plan. As a result, I consider that the proposal would be contrary to policies 3, 7, 13 and 30 of the Local Plan, policies H1, GG1, G5 and G6 of the London Plan and the advice contained within the Framework. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jo Dowling

INSPECTOR