



Appeal Decision

Site visit made on 14 August 2023

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd October 2023

Appeal Ref: APP/Q5300/W/22/3309605

Clock Parade, London Road, Enfield, EN2 6JG

- 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 Three Acacia Place Limited against the decision of London Borough of Enfield.
 - The application Ref 21/04817/FUL, dated 24 December 2021, was refused by notice dated 9 June 2022.
 - The development proposed is the redevelopment of site including part demolition and rebuild to create a four-storey building and a part five/part two storey building to comprise 41 net additional residential units with commercial floorspace at ground floor level, an enlarged basement car park, associated refuse and cycle storage and landscaping.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Three Acacia Place Limited against London Borough of Enfield. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council did not submit a statement by the deadline of 8 February 2023. Thus, I have used the officer report provided with the Questionnaire for the determination of the appeal.
4. The Council has cited 'substandard internal floorspace layout' as part of refusal reason no.1 on its decision notice. However, in the officer report it states at paragraph 6.30: '*The proposed residential flats all exceed the minimum required floorspace requirement as per the National internal floorspace standards (adopted March 2015)*' and at paragraph 6.34 '*Planning officers recognise the proposed residential units meet floorspace, light requirements*'. This is a contradiction and in the absence of evidence to the contrary, an error. Thus, I have not included this element in the determination of the appeal.
5. The Revised National Planning Policy Framework (the Framework) was published on 5 September 2023, after the appeal was lodged and after the Hearing. The changes to the Framework are not material to the appeal, thus I have not sought any comments from the parties. Consequently, whilst I have had regard to the Framework in reaching my decision, I will not prejudice any party by taking this approach.
6. On 14 January 2022, the Government published the 2021 Housing Delivery

Test (HDT) results. The HDT results show that the London Borough of Enfield has delivered 67% of its housing requirement over the latest 3-year period. Consequently, the presumption in favour of sustainable development contained within paragraph 11 d) of the Framework would be engaged. In the absence of any evidence to the contrary, I have dealt with the appeal on this basis.

Main Issues

7. The main issues of this appeal are:

- whether satisfactory accommodation would be provided for future occupiers of the scheme, with particular regard to outlook, ventilation and the outdoor play area;
- The need for and provision of affordable housing, having regard to the financial viability of the development;
- the effect of the proposed development, with regard to flood risk and surface water drainage;
- the effect of the proposed development on the character and appearance of the appeal site and surrounding area; and,
- whether the proposed development would be acceptable in terms of its transport and highways impacts, with particular regard to vehicular parking.

Reasons

Living conditions

8. The proposed development will include 16no. centrally located units that will be single aspect. Whilst it is of the view of the appellant that this does not amount to a 'majority', it is nonetheless, a significant number. Other schemes¹ have been cited by the appellant in relation to this matter, which are considered to have more single aspect units.
9. Whilst noting the other schemes referenced, relatively little detail has been provided regarding their particular planning backgrounds. Without such information a full and detailed comparison between those developments and the case before me cannot be drawn, especially as the reference numbers of both schemes pre-date the London Plan 2021 (LonP) and were likely approved before its publication. Therefore, I attribute little weight to these other schemes in the determination of the appeal. The appellant is of the view that further overheating analysis can be dealt with by means of condition. However, I consider that such an analysis should accompany and inform the proposal. Consequently, an unacceptable scheme could not be made acceptable in this instance through the imposition of a suitably worded condition.
10. The proposed development includes a modest communal play area on the ground floor amounting to 30m². The Council has estimated that an area of approximately 110m² of play area should be provided on site from a forecast of 11no. children that would reside in the proposed development by using the Greater London Authority population yield calculator. This would be in accordance with LonP Policy S4. Whilst LonP Policy S4 is not cited on the Council's decision notice, both parties have made reference to it in their

¹ 17/01864/FUL (Capitol House) and 17/03634/FUL (Public House)

submissions, so I will not prejudice any party in taking LonP Policy S4 into account in the determination of the appeal, especially as the Council's figures are not disputed by the appellant, and it is accepted that the proposed play area is below the requirement. However, the appellant is of the view that the proposed area is representative of the site constraints. In addition, to the constraints of the site, the appellant considers that the deficiency in playspace is mitigated due to the proximity of the site to Riverside Park, Enfield Town Park, and Bush Hill Park and, through a contribution towards off site play equipment being secured through a planning obligation. Furthermore, the appellant is of the view that the proposed play area would be a useable and desirable feature for future residents.

11. The proposed play area is located to the east of the site and would have 2no. points of access, onto Private Road and an internal cobbled area, opposite units B01 and B02, respectively. However, the drawings indicate that both entrances would be close to areas used for the parking of motor vehicles. Given the layout and the position of the points of access to this area, it is unclear if the occupiers of all of the proposed development would have convenient access to this outside area. In any event, on the number of properties proposed in the scheme I find the play area is modest in size. Additionally, on the evidence before me, whilst I find that the proposed play area, is likely to receive some day/sunlight at certain times of the day, it will also be over shadowed due to the surrounding development, which overall, would likely prevent it from being a successful usable space.
12. In reaching the above findings, I also observed the open spaces referred by the appellant are within walking distance and represent good public amenity spaces and recreation facilities. However, I conclude that due to the amount of development proposed on the site there would be an unacceptable shortfall in the proposed play area provision for future occupiers. I have considered the location of the appeal site, the proposed balconies/terraces within the apartment block and the overall number of outdoor amenity spaces proposed. However, even when this is taken into account, I still consider that there is a shortfall in the area proposed for play. Additionally, I acknowledge the suggestion by the appellant surrounding a contribution towards off-site play equipment, but such a contribution is not listed in either of the legal agreements submitted.
13. For the reasons given above, I conclude the proposed development would not provide satisfactory living conditions for future occupiers, with particular regard to ventilation and outdoor play space. Consequently, the proposed development fails to accord with the amenity aims of LonP Policy D6, S4; Policy CP4 of the Enfield Core Strategy (CS); Policy DM8 of the Enfield Development Management Document (DMD) and the LonP Housing Supplementary Planning Guidance - 2016, which collectively require high quality design and standards in housing. The scheme would also fail to accord with the requirements of the Framework.

Affordable housing

14. Paragraph 34 of the Framework states that development plan policies which set out the contributions required from development, including the provision of affordable housing, should not undermine the deliverability of the plan. Paragraph 57 of the Framework and Regulation 122 of the Community

Infrastructure Regulations 2010, as amended (CIL Regulations) set out that planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, are directly related to the development; and fairly and reasonably related in scale and kind to the development.

15. Development plan policies set an expectation that major residential development includes a minimum proportion of affordable housing but allow that this may be subject to financial viability testing. This is in line with paragraph 58 of the Framework, which states, '*Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage*'. I accept the presumption in favour of sustainable development contained within paragraph 11 d) of the Framework being engaged is also a consideration on this matter.
16. Thus, where the rigid application of policy requirements for affordable housing would jeopardise the delivery of housing in line with the development plan, they may be applied flexibly, or even set aside, according to the circumstances. The appellant did not include any affordable housing within the proposed development and contends that a financial contribution for its provision elsewhere should not be made either. It is the view of the appellant that both options would make the scheme financially unviable.
17. I have no doubt that affordability is, and will continue to be, a major issue in the borough, as it is throughout London. Affordable housing provision and/or financial contributions from residential developments, such as the appeal scheme make a significant contribution towards achieving the strategic policies and targets, including maximising the provision of social rented housing. It appears that the Council were not in receipt of the full Financial Viability Assessment Report (FVAR)² during the assessment of the planning application. Although, there is no doubt that the FVAR has been produced by a suitably qualified authority and in the absence of any evidence to the contrary it forms a material consideration of significant weight.
18. I have taken into account the age of the FVAR and acknowledge that any compensation to existing commercial tenants is not yet known, but I am not convinced that they should be excluded from the calculation. Overall, the indication from the FVAR, is that the scheme would be profitable, providing a return of 18.84% on Gross Development Value (GDV), based on a 100% private appraisal. I have no reason to disagree with the appellant's viability appraisal. However, the return range suggested in the Planning Practice Guidance is between 15-20% of GDV. Whilst the return for the appellant is within this range on the basis of a 100% private appraisal, it would appear that there is some margin within the return that could be attributed to affordable housing, albeit I accept that that any possible contribution may not amount to the full requirement. In this instance, there is no scenario/appraisal, including full/part provision of affordable housing, either on site or as a financial contribution.
19. For the reasons given above, I conclude that in the absence of an appropriate mechanism, the proposed development would not contribute towards

² Financial Viability Assessment Report by Savills, dated August 2021

affordable housing. Consequently, the proposed development would fail to accord with LonP Policies H4, H5, H6; CS Policy CP3; DMD Policy DMD1; the Council's Section 106 Supplementary Planning Document – 2016; the LonP: Housing Supplementary Planning Guidance – 2016, which collectively encourage the provision of affordable housing. The scheme would also fail to accord with the requirements of the Framework.

Drainage

20. The appellant has submitted a Flood Risk Assessment³ (FRA) in support of their submission, to accompany the Surface Water Management Strategy⁴ that was provided with the planning application. However, whilst the FRA has sought to address concerns surrounding flood risk from surface water, this seems to be based upon a medium risk scenario. In such circumstances, the site would not be affected by such an occurrence. However, the FRA does not comprehensively demonstrate that this would be the case for all events, particularly given the proximity of the adjacent watercourse.
21. Given the details in the FRA and the location of the site in Flood Zone 1, I do not consider that the above concerns could not be overcome. Nonetheless, the FRA does not adequately deal with the basement in the proposed development or the fact that 2no. residential units are located on the ground floor. These omissions amount to significant misgivings in the FRA. Even though the scheme would include green roofs and could introduce features such as impermeable paving, I am not convinced that the FRA adequately demonstrates the effect on public safety would not be compromised.
22. For the reasons given above, I conclude, it has not been demonstrated that the proposed development would not create any significant harm in respect of flood risk/drainage. Consequently, the proposed development would fail to accord with LonP Policies SI 12, SI 13; CS Policy CP21, CP28; DMD Policy DMD 61, which collectively require sustainable drainage solutions and the management of surface water. The scheme would also fail to accord with the requirements of the Framework.

Character and appearance

23. The existing building occupying the site is 2no. storey in form and appears low, given its footprint and projection fronting onto London Road. The proposed development would introduce additional built form to the site, through the proposed part 5no. storey and part 4no. storey development, which would be in the form of 2no. separate blocks, albeit linked visually through their contemporary design and appearance.
24. It is agreed that the existing building is of low density and apart from the clock feature and associated increased parapet detailing over the local supermarket on the elevations facing London Road and Private Road, the overall site demonstrates limited merit in design terms. In principle the council confirm its support for the upward projection and increase in built form of the site, as it would contribute to its housing targets. I too find, this site is suitable for development, particularly given the strategic aims of the LonP, which seeks to optimise such sites, as the one subject of this appeal for new residential and commercial development to meet London's future requirements.

³ Flood Risk Assessment by Lanmor Consulting, dated October 2022

⁴ Surface Water Management Strategy by Reports 4 Planning, dated May 2021

25. During my visit, I noted that properties to the north of the site are initially 2no. storeys in height with some 3no. storey blocks located on London Road. To the south properties are predominantly 2no. storeys in height. Given these factors, the distances from the properties on Private Road and the design of the third floor, including its set back on the London Road elevation, I do not consider that 4no. storey block would comprise a harmful addition to the existing street scene. Furthermore, to the south, a 5no. storey residential block fronts London Road, which is located between the petrol station and Uvedale Road. Additionally, between the site and Castleleigh Court a group of mature trees is present, which are a prominent feature when viewed from the street. Given the distances that would be maintained, the mature trees and the existing 5no. storey residential block in proximity to the site, I consider that these are mitigating factors that would enable the proposed 5no. storey block to successfully integrate with its surroundings.
26. For the reasons given above, I conclude the proposed development would not harm the character and appearance of the appeal site or surrounding area. Consequently, the proposed development accords with the design, character and appearance aims of LonP Policy D3, D4; CS Policy CP30; DMD Policies DM8, DMD 37, which collectively require optimising site capacity through a design led approach, delivering good design and maintaining and improving the quality of the built environment. The scheme would also accord with the requirements of the Framework.

Vehicular parking

27. The proposed development would include 20no. spaces for a total of 47no. residential apartments of which more than half are studio/one bedroom flats. There would also be 14no. parking spaces for the 1,363m² of commercial units. It is agreed between the parties that the amount of on-site provision is broadly in line with the core parking provision expectations in LonP Policy T6. Additionally, the parties do not disagree over the site's public transport accessibility level rating, where it is evident that occupiers of the development would have convenient access to shops, services, public transport and a cycle network.
28. The appellant has provided a Transport Assessment⁵ in support of their submission, where the findings are not disputed by the Council. Additionally, the appellant has provided a Technical Note⁶, which provides the outcome of an updated parking survey, amongst other things. Whilst the original survey in the Transport Assessment was undertaken during the pandemic, the latest survey was not. Although, I accept that the latest survey is still only a snapshot in time. However, I find that the data contained in both surveys to be comparable. During my visit, I noted the level of parking in the area surrounding the site, broadly reflects the findings in the surveys.
29. It is also highly probable that not all future residents would have access to a private vehicle, given the type of accommodation proposed, the sustainable location of the site, its proximity to the town centre, shops and services, access to public transport and the cycle routes/network. Also, there is a reduction in commercial floorspace, when compared to the existing situation. Thus, taking all factors into consideration and given the existing stress on parking in the

⁵ Transport Assessment by Transport Planning Practice, dated December 2021

⁶ Technical Note: Parking Provision by Transport Planning Practice, dated October 2022

area, I am not convinced that parking for the appeal scheme would displace existing resident parking. Consequently, the proposed development would not lead to indiscriminate and anti-social parking which would impact negatively on the safe and efficient operation of the local highway network. Accordingly, the on-site parking provision is appropriate for the proposed development. I note the appellant has provided a legal agreement, which would secure contributions towards a Control Parking Zone (CPZ) consultation and CPZ Traffic Management Order (TRO) and Implementation contribution, and restrictions on parking permits. However, in the absence of any evidence to the contrary and given my own findings, I am not convinced that any such contributions would be required.

30. For the reasons given above, I conclude that the proposed development would not lead to adverse transport and highways impacts. Consequently, the proposed development accords with LonP Policies T6, T6.1; CS Policy CP24; DMD Policies DMD45 and DMD47, which collectively encourage the provision of appropriate and safe parking arrangements. The scheme would also accord with the requirements of the Framework.

Other Matters

31. The 2021 HDT results show that the Council has underdelivered against its housing requirement over the latest 3-year period. Consequently the presumption in favour of sustainable development contained in 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.
32. I note the comments from the appellant about the way the Council handled the application, but this does not go to the planning merits of the case. I have considered this appeal scheme on its own particular merits and concluded that it causes harm for the reasons set out above.

Planning Balance and Conclusion

33. There would be social benefits arising from the contribution to the Council's housing supply, noting the Framework highlights the contribution small and medium sized sites can make to meeting the housing requirement in the area. The development would also give rise to some economic benefits during the construction phase and support to local services. However, these and the other benefits that would arise do not significantly and demonstrably outweigh the harm created by the proposed development, particularly through the location and size of the proposed play area, no provision for affordable housing and drainage/flood risk.
34. The proposed development would therefore conflict with the development plan and there are no other considerations, including the Framework and its presumption in favour of sustainable development, that outweigh this conflict. For the reasons outlined above, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR