



Appeal Decision

Hearing held on 31 October to 2023

Site visit made on 1 November 2023.

by Louise Nurser BA (Hons) Dip UP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2023

Appeal Ref: APP/N1540/W/23/3323856

Essex Police, W M I R, 35-39 London Road, HARLOW, CM17 0DA

- 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 Churchill Retirement Living Ltd against the decision of Harlow District Council.
 - The application Ref HW/FUL/22/00297, dated 21 June 2022, was refused by notice dated 9 December 2022.
 - The development proposed is Demolition of existing buildings and the erection of 31 Retirement Living apartments for older people (comprising 20 no 1 bed and 11 no 2 beds) including communal facilities, access, car parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The final Statement of Common Ground and a Viability Statement of Common Ground were provided after the receipt of the bulk of the parties' evidence. Therefore, there are some inconsistencies between the evidence put forward and the agreed stance of the main parties. For the avoidance of doubt, I have taken the Statements of Common Ground as reflecting the most up to date position.
3. Nonetheless, to be clear both parties are agreed that the Council can demonstrate a five-year supply of deliverable housing sites.
4. The lack of a legal agreement to provide a commuted sum for affordable housing, a green travel plan and monies towards associated medical requirements both on and off-site was one of the original reasons for refusal of the scheme. However, following the submission of the appeal both parties have worked together, and agreement has been reached within a signed Viability Statement of Common Ground that the scheme could only provide limited funds. A signed planning obligation to provide a financial contribution for ambulance services has been received within the period stipulated at the hearing¹. As such, this reason for refusal has fallen away.

Background and Main Issues

5. The proposed development would provide older person's purpose-built accommodation in an urban location on a brownfield site. It is clear that the

¹ Inquiry Document 2

principle of development is acceptable to the Council, and I have no reason to disagree.

6. From what I have read, heard, and seen; I consider the main remaining issues to be: whether the proposed development would provide satisfactory living conditions for its occupiers with particular regard to the quality of the outdoor amenity space; the effect of the proposal on the character and appearance of the local area; and the effect of the development on the setting of nearby heritage assets, bearing in mind the special attention that should be paid to the desirability of preserving their setting.

Reasons

Outdoor Amenity Space

7. I am aware that the Council has confirmed that it does not have any specific quantitative standards for older person's housing. However, given that of the 31 apartments only 11 have balconies or terraces, this paucity of private amenity space underlines the importance of the communal landscaping providing an attractive and easily accessible environment to residents, particularly in the context of residents who are likely to spend a greater proportion of their time at home than more mobile younger people.
8. During the hearing reference was made to the typical age of those choosing to move into similar properties and the experience which the proposed operator has in the management of older person's accommodation. Nonetheless, whilst residents who choose to move into the flats may be significantly older, the flats would be marketed for adults over 60 years of age who, irrespective of their age, may wish to have the opportunity to actively enjoy outdoor space sit and walk outdoors and thereby derive the accepted health benefits from easily accessible outdoor space.
9. The overall building footprint is of a T shaped design which almost takes up the whole of the depth of the plot with parking to the front. Therefore, the residual outdoor space of which the majority is to be used as communal amenity space, is, to all and intents and purposes, split into two areas: one at the north and the other to the south of the three-storey central element of the development with a narrow strip of grassed land linking the two.
10. Access to the southern garden is via a terrace which leads off the communal lounge. However, the area of amenity space to the north is proposed to be accessed via a door at the end of a corridor and then along a path leading to a sitting out area in the north-eastern corner of the site. I note that walking down the corridor may provide the opportunity for social interaction between residents, nonetheless, in my judgement, the length of the indirect route into the garden would not encourage residents to go outside and readily use this portion of the amenity space.
11. Details of the landscaping to be controlled by condition could, up to a point, ensure the urban garden provided an outdoor environment broadly consistent with Principle DG34 of the Harlow Design Guide Supplementary Planning Document 2011 (SPD).
12. Nonetheless, due to the footprint of the building, whilst the proposed development may well provide a number of microclimates, and older people may wish to avoid sitting in direct sunlight due to the risk of overheating, it is

clear from the overshadowing analysis² that in spring, the majority of the communal garden area would be in shade. Conversely, in the hotter summer months, the communal terrace area would be in full sun until the mid-afternoon albeit, this could be managed using parasols. Again, in the autumn much of the communal gardens would be in the shade. Given the design and scale of the proposed development overshadowing would be unavoidable for much of the year when it might be reasonable to expect residents to want to go outside.

13. I am aware that in the southern half of the garden there would be more than 2 hours of sunlight in March and therefore, it has been argued that the proposed development would be consistent with the Addendum to the Harlow Design Guide SPD (2021). However, this metric is only guidance, and in any case, the majority of the communal space would be overshadowed for much of the time and thereby fail to provide high quality and useable amenity space to residents.
14. In coming to this conclusion, I have also taken into account the area of open space across London Road which would be accessible for the more mobile residents.
15. I fully accept that the operator has been providing this form of accommodation for several years on constrained urban sites and that the company's servicing model ensures that any planting or outdoor space is well maintained. I have no reason to suggest that in this case it would be otherwise. Moreover, the operator's experience may well be that many residents consider internal communal space to be more important than outside amenity space, private or communal. Nonetheless, this should not be a binary choice and does not obviate the importance of providing outdoor amenity space of a good quality consistent with Policy PL2 of the Harlow Local Development Plan, adopted 2020 (LP) which relates, among other design considerations, to the effects of overshadowing on amenity; principles DG33 and DG34 of the Harlow Design Guide Supplementary Planning Document adopted October 2011; and with the aspirations for good design set out within paragraphs 126 and 130 of the Framework, against which I conclude the proposed development fails.

The effect of the development on the character and appearance of the area.

16. London Road runs broadly from the north to the south. It links the Old Town which sits on an east west axis to a large, grassed roundabout on the outer periphery of Harlow and beyond. To the south of the Old Town are some modern pastiche Georgian developments which appear polite within their context. However, to the south of Walford's Close, there is a clear change in character with a less built-up ambience. This is consistent with this stretch of the road having been outside the historic core in the open countryside.
17. Developments such as the Fawbert and Barnards School, and the Gate Lodge associated with Marks Hall, were built in the early nineteenth century and have their own contemporary style. Further development followed in the early twentieth century with the original Police Station on the appeal site, of which I have seen photographs and which has since been demolished and replaced with the existing 1970's brick buildings. The former Harlow Post Office is an attractive, single storey red brick 1920's building which is located on the corner of Walford's Close and London Road and is therefore important in the

² Appendix 2 Mr Shellum's Hearing Statement.

streetscape when viewed from the north. Immediately adjacent to the appeal site sits a two-storey, hipped roof, brick house from the 1930s, built with a Georgian influence, which has been converted into a dental surgery. As such it is easy to understand how the built-up area developed from open countryside outside of Harlow Old Town.

18. Even following the construction of the housing associated with the New Town, the western side of London Road has retained its open leafy character with a strip of mature woodland running from the roundabout to East Park. To the north is an area of public open space, which is a remnant of parkland associated with Marks Hall. The Gate Lodge remains.
19. The immediate context of the site sits within the urban area. However, the wooded frontage along London Road, together with the playing fields and car park associated with the school and the mature trees and garden area at the front of the school, gives this particular extent of London Road a spacious, edge of settlement character.
20. The Fawbert and Barnard's School had been built in open countryside and was designed to be seen in isolation. As a civic building it has been designed to reflect its significant public status. This retains its important role in the street scene and due to the configuration of London Road and the set back of the existing police station its northern flank wall remains highly visible when viewed from the north. The other individual buildings have their own discrete character and do not visually impose on each other.
21. There is a derelict police station on the appeal site. It is of a simple design redolent of the 1970s. The existing buildings which vary in height include a gable pitch roofed two- storey building, which is orientated gable end to London Road, flat roof garages and a two-storey flat roofed element, none of which are architecturally significant. However, due to its simple utilitarian design, it appears subservient within the wider street scene and does not compete with the other buildings.
22. In contrast, when viewed from London Road, the proposed three storey development would appear considerably larger. The T shaped building would extend almost the whole width of the plot. I am aware that it would be on the same building line as the former police station and therefore set back off the road. Nonetheless, notwithstanding that the appellant has broken down the mass of the building by designing two recessed wings, the use of contrasting materials, and a two-storey central gable feature to the front, and horizontal bands, the design of the front elevation would appear cramped on the site, contrived and monolithic when experienced walking or driving by.
23. In coming to this conclusion, I have been referred to how the ridge line of the roof is consistent with the highest element of the roof of the adjacent primary school, and that the ridge line of the northern wing of the proposed development is aligned with that of no 33 London Road. However, I note the ridgeline to the southern block of the roof is considerably higher than that of the small, hipped roof element of the closest wing of the school and that there is little change in height of the ridge line to differentiate the central and flanking elements of the elevation.
24. The dormer windows, which punctuate the eaves line, would to some extent break up the bulk of the roofs on either side of the central hipped roof. In

addition, given the width and depth of the roof, which is to be covered in concrete roof tiles, together with the proximity and relationship to the other properties the overall effect is of a large roofscape which would appear bulky and overbearing. This would be accentuated by the use of a half hip at both the northern and southern ends of the development which makes the building appear truncated. Cumulatively, the design of the roofscape gives a strong horizontal emphasis to the building which emphasises its scale and bulk.

25. The fenestration to the front of the property includes mock Georgian style uPVC sliding sash windows. These are said to have been a response to other Georgian influenced buildings within London Road. I note that older residents may struggle with traditional sliding sash windows, and I have been informed of potential problems with mechanical sliding sash windows. When closed the fenestration would be unremarkable but once opened would protrude from the wall and appear incongruous.
26. In sum, from what I have read and heard the building has been designed to reflect the variety of building types, scales and materials along London Road to unite 'both historic and modern development'³.
27. However, rather than provide a building which sits well within its context, cumulatively, this has resulted in a building which does not have a clear design rationale and therefore would appear visually confusing, discordant and domineering, upsetting the legibility of the stretch of London Road and altering the current character of the eastern side of London Road. Moreover, due to the size of the development within the plot it would appear cramped and incongruous. Taken together this results in a building which would adversely impact on both the spacious character and the existing appearance of the wider area by introducing a large, incongruous building onto a plot which is currently quite open and visually subservient to the neighbouring school and does not visually impinge on no 33 London Road.
28. As such, whilst it would result in the redevelopment of previously developed land, the issues with the design of the proposal are such that this would be contrary to Policy PL1 of the LP which lists a set of design principles for new development to respond positively to the surrounding area and paragraphs 124 (d), 126 and 130 of the National Planning Policy Framework 2023. The appeal's dismissal would be consistent with paragraph 134 of the Framework.

Setting of heritage assets.

29. The following heritage assets have been considered given that they are within the vicinity of the appeal site: - Harlow Old Post Office, a non-designated asset; the Old Harlow Conservation Area; the Grade II listed Garden Wall to Fawbert and Barnard's School, the Grade II listed Gate Lodge, and the Grade II Fawbert and Barnard's School. Of the five heritage assets, I consider that the setting of Harlow Old Post Office and the Old Harlow Conservation Area do not require consideration in relation to this appeal.
30. In my judgment the appeal proposal lies within the setting of the Grade II Gate Lodge, the Grade II Garden Wall to Fawbert and Barnard's School and the Grade II listed Fawbert and Barnard's School, all of which were listed in June 1981. Paragraph 200 of the Framework makes clear, any harm to, or loss of

³ Paragraph 7.38 of Mr Lemberg's proof of evidence and paragraph 5.2.9 of Mr Price's Heritage Statement.

significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

31. The glossary of the Framework defines setting as the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

Gate Lodge

32. Gate Lodge is a Grade II listed building. It is of special national historic and architectural interest. It is of a simple square floor plan with a ridged, gable slate roof. It faces on to East Park with its side onto London Road.
33. Its significance derives from its relationship with the Marks Hall estate, which has since been developed. Therefore, it provides important historic evidence of the development of the history of the area and is an example of the architecture of early nineteenth century gate lodges.
34. Both heritage specialists did not consider that the setting of the Gate Lodge would be affected by the proposed development. I would concur with this conclusion.

Fawbert and Barnard's School

35. Fawbert and Barnard's School was originally built as a non-denominational school with no religious affiliations away from the town in open countryside. However, it became a British school, and remains in use as a local primary school.
36. It has been extended at the rear. However, from the front it retains for the most part its original appearance set back from the road, and what appeared to have been a formal garden to the front with a central porticoed entrance to the school with a stock brick dwarf wall and arched gated entrance (which is listed separately) fronting the pavement.
37. It was built in 1836 during the later Regency period. During the hearing both parties' heritage specialists agreed that the building should be described as having been built in the classical style. As such it relies on a restricted palette of materials, and clean simple lines predicated on a symmetrical U plan.
38. The most significant roofscape is formed from three slate hipped roofs with stone moulded parapets, the principal is centred on the core of the building and the other smaller hips which are tangential to the road sit on the two flank 2 storeyed ends. The fenestration reinforces the symmetry of the school with notable tall round headed sashes each side of the central elevation, which are replicated on the end units, and the side elevation.
39. Other than the string course, and portico which provides contrast, the stock brick is used to provide subtle relief within the design.
40. The historic significance of the building derives from it being one of the earlier educational buildings for children nationally, in its association with its benefactors and how it related to the genesis of early education locally and the

development of Harlow in the early nineteenth century including its economy, and its location outside of Old Harlow.

41. Its architectural interest derives from it being an early example of a purpose-built educational building. It is a classical design which has been applied to an educational facility to result in an austere building which has included small references to its educational use, such as high cills to stop students gazing out of the window. It has echoes of Wesleyan chapels reflecting the benefactors' religious background. Whilst it has been extended, the original fabric appears relatively unaltered retaining its open setting to the front.
42. The setting of a building is not static; however, the setting of a building is likely to be greater than that of its curtilage. I have been referred to its 'principal setting' being derived from its garden and curtilage. However, setting is a broad and fluid concept and I consider that its setting extends along London Road to the north and south of the building, the school playing fields and on the western side of London Road and including through glimpsed views.
43. There is no direct functional relationship between the appeal site and the adjacent listed building. Nonetheless, it is clear to me that the appeal site which borders the school lies directly within its setting. Due to their size and simple design the current buildings have a neutral impact on the setting of the Fawbert and Barnard's School. Conversely, as previously established the proposed development would result in a development which is cramped, contrived and monolithic. The roofscape which would be of unsuitable concrete tiling would, due to the horizontal emphasis and the lack of sky view between the neighbouring properties, detract from the ability to experience the significance of the school derived from its pared down simple design which would have been originally designed as the pre-eminent building within an open countryside setting.
44. The proposed development would include a mix of design cues from the buildings along London Road would lack a clear design rationale, with a mix of contrasting materials which would therefore appear incongruous and visually jarring. This would introduce a suburban generic element to the street scene which would not enhance the listed building's setting. This would not only detract from the architectural quality of the listed building when experiencing it when walking or driving south along London Road and when viewed from East Park but would impact on the legibility of setting of the school as part of the historic development of this element of London Road and therefore the experience of the school's significance⁴. However, I note that some long-range view of the school would remain unaltered due to the set back of the building and therefore, these aspects of the setting would remain unaltered by the development.
45. I consider that the Garden Wall to Fawbert and Barnard's School whilst separately listed is indivisible from the school. Therefore, I similarly conclude its setting would be compromised by the proposed development.
46. As such, I conclude that there would be harm to the setting of the Fawbert and Barnard's School and the Garden Wall to Fawbert and Barnard's School. However, it is my judgment that whilst the harm to the setting of both listed buildings would be significant, it should be considered as less than substantial

⁴ See pages 59 and 62 of the Summary of Appeal Proposal Drawings and Images.

harm, in the context of paragraph 202 of the Framework given the scope of the proposal. This harm nevertheless carries considerable importance and weight in my decision making.

Conclusion

47. Paragraph 199 of the Framework (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 200 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have a clear and convincing justification.
48. In summary, I have found less than substantial harm to the setting of the Grade II Fawbert and Barnard's School and the Garden Wall to the Fawbert and Barnard's School. Under such circumstances, paragraph 202 of the Framework advises that the harm to the setting of these assets should be weighed against the public benefits of the proposal which I explore below.

Benefits

49. As part of the Statement of Common Ground which was submitted prior to the opening of the hearing, a number of planning benefits were agreed between the main parties, and weight accorded to them⁵.
50. During the hearing it was confirmed that the Council had no reason to demure from its previously agreed position, albeit it reiterated that any avowed benefits should be taken in the context of its objection to the design of the scheme and the impact therein on the heritage asset.
51. From what I have read and heard, whilst I may not agree with the level of weight given to all of the identified benefits, including the weight to be attached to the development of previously developed land; development in a sustainable location; and making effective and efficient use of land, nevertheless, substantial weight should be attached to the benefits related to the provision of older persons housing which the Planning Practice Guidance Note describes as 'critical' ⁶.
52. Furthermore, the population of Harlow, as a New Town, does not have the mix of ages typical of older established settlements, nor does it have the associated supporting infrastructure for the elderly which would have normally developed organically. In addition, no private sector retirement living accommodation has been provided within Harlow within the last thirty years. Consequently, the need for older person's housing within Harlow is pressing. Moreover, substantial weight should be given to the subsequent freeing up of under occupied housing stock.
53. The attribution of moderate weight to the economic, environmental benefits (excluding the issues of design and heritage matters) is reasonable, as is the limited weight to be given to the planning contribution of £7, 746 towards the capital cost of providing ambulances or medical equipment which I have

⁵ Statement of Common Ground October 2023.

⁶ Planning Practice Guidance: Reference: ID: 63-001020190626

concluded meets the relevant legal tests. As such, I conclude cumulatively the scheme would provide substantial public benefits.

54. However, these public benefits are likely to accrue from any development of retirement housing on the site, and it is common ground that the principle of such housing on this site is acceptable and consistent with the development plan.
55. Even if I were to accept the weight to be given to all of the agreed public benefits put forward by both main parties within the Statement of Common Ground, these cumulative substantial public benefits deriving from the proposal, would still not be sufficient to outweigh the less than substantial harm to the setting of the listed buildings which I have identified above as a result of the proposed development.
56. Given the above, I conclude that, on balance, the proposal would fail to preserve the setting of the Grade II listed buildings. This would fail to satisfy the requirements of the Act, paragraph 197 of the Framework and conflict with Policies PL1 and PL12 of the LP which seeks amongst other things for development to be well designed, respond to local context and character and to protect the setting of listed buildings. As a result, the proposal would not be in accordance with the development plan and therefore is not sustainable development.

Other Matters

57. I have been provided with examples of other schemes built by the operator. However, I am not aware of the wider context in which these developments are located.
58. I have been referred to two appeals⁷ in support of the proposal which I have carefully considered where, like this scheme, considerable weight has been given to the benefits of older housing. However, I note one of the decisions did not relate to heritage assets and in the other, the inspector did not find any harm to heritage assets, albeit he opined that even if he had, this would not have altered his decision.
59. However, when quizzed by me, the appellant made clear that he did not consider that, in the context of a finding of less than substantial harm, the benefits arising from the provision of older persons housing was a carte blanche to allow development in all situations, and that as a decision maker, I should determine each case on its merits. This is what I have done.

Conclusion

60. For the reasons given above I conclude that the appeal should be dismissed.

Louise Nurser BA (Hons) Dip UP MRTPI

INSPECTOR

⁷ APP/N1730/W/20/3261194 & APP/H1705/W/20/3248204.

APPEARANCES

FOR THE APPELLANT:

Mr Ben Fullbrook (Counsel).

Mr Matthew Shellum, BA (Hons), Dip TP, MRTPI.

Mr Paul White, M Phil, M CifA, PIEMA.

Mr Gideon Lemberg B Arch, RIBA, ARB (Design).

FOR THE LOCAL PLANNING AUTHORITY:

Mr Josef Cannon (Counsel).

Ms Elizabeth Beighton BA (Hons), MTP, PG Dip, MRTPI.

Ms Seren Wilson, BA (Hons), MSc.

Mr Sam Williams MA.

DOCUMENTS

ID1: Official list entry, Gate Lodge, 115 East Park.

ID2: Signed planning obligation.

PLANS

ID3: Marked up copy of site location plan showing viewpoints.