
Appeal Decision

Site visit made on 13 February 2024

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Appeal Ref: APP/R3515/W/23/3325022

Land at Tye Road, Ipswich, Suffolk IP3 0BF

- 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 Jaevee Limited against the decision of Ipswich Borough Council.
 - The application Ref IP/22/00578/FUL, dated 27 June 2022, was refused by notice dated 6 April 2023.
 - The development proposed is erection of student accommodation block providing 160 bedrooms over 5 storeys.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application originally sought permission for a development of 172 bedrooms over 6 storeys. Prior to the Council's decision, this was amended to 160 bedrooms on 5 storeys, as set out above.
3. An application for costs has been made by the appellant against the Council. That application is the subject of a separate Decision.

Main issues

4. Having regard to all the submissions before me, I find that the main issues in the appeal are as follows:
 - whether, in terms of land use, the proposed development would accord with the relevant site-specific development plan policy for the site;
 - the development's effects on the character and appearance of the area;
 - the effects on the living conditions of neighbouring occupiers, with particular regard to privacy and overbearing;
 - whether the scheme would provide adequate living conditions for its own future occupiers, in terms of on-site amenity space;
 - and whether permission should be granted in the absence of a Section 106 agreement or undertaking.

Reasons for decision

Housing policy

5. The Council's first reason for refusal (RR1) focuses on Policy SP27 of the Site Allocations and Policies (the SAP)¹, adopted in March 2022. That policy identifies a number of sites, including the present appeal site, which have existing planning permissions for various types of development. In the event of those permitted schemes not being implemented, Policy SP27 states that the sites will be protected for residential or residential-led mixed-use development.
6. In the present appeal, the proposal is for a development of student accommodation for the University of Suffolk, whose Ipswich campus is nearby. The accommodation would comprise 160 individual study-bedrooms, each with their own ensuite bathroom. These would be arranged in clusters of around half a dozen units, with each such group sharing a dining-kitchen. To my mind accommodation of this type would be clearly residential in nature. The development would also include some additional facilities such as a communal lounge, gym and laundry, which would occupy part of one floor; but even taking these into account, there can be no doubt that that the scheme would be 'led' by its residential element. On any basis therefore, it seems to me that the appeal proposal falls squarely within the types of land use that Policy SP27 seeks to permit and encourage.
7. The Council contends that the sites included in Policy SP27 are intended to meet other housing needs, rather than student accommodation. However, neither the policy, nor its supporting text, appears to make any distinction between housing for students and other types of residential development. Indeed Policy SP27 itself makes it clear that some of the sites in question are ones where student accommodation has already been granted permission. In the absence of any evidence to the contrary therefore, I see no policy basis for seeking to exclude student housing on the appeal site.
8. The Council goes on to argue that the need for more student accommodation was not identified in the Strategic Housing Market Assessment (the SHMA). At that time, it was apparently reported that despite the University's growth plans, student numbers were lagging, and therefore the impact on the housing market was likely to be small. Because of this, it is suggested that more evidence is now required, to show that the appeal proposal is needed. I appreciate that the issue underlying this stance is the unmet need for housing for general purposes, including families and newly-formed households, within Ipswich; the expansion of higher education may result in attracting more students from outside the area, thus increasing the overall level of housing demand. But nevertheless, the fact that the needs of this sector may not have been fully anticipated at the policy-making stage, is not a good reason for resisting such development now. The National Planning Policy Framework (the NPPF) makes it clear that students are one of the many different groups whose housing requirements are to be addressed through planning policies and decisions². Again, there is no evidence before me of any policy basis, at either national or local level, for giving lower priority to the housing needs of students

¹ Full title: the Ipswich Borough Council Local Plan Site Allocations and Policies (Incorporating IP-One Area Action Plan) Development Plan Document review

² NPPF paragraph 63

than those of any other groups. In the circumstances, I can see no basis for the need for this particular development to have to be demonstrated.

9. In any event, the submitted evidence shows that the University's existing stock of purpose-built accommodation amounts to less than 700 bedspaces. The current student population is variously said to be either circa 6,000, and rising³, or alternatively 9,500 – 10,000⁴. Although this apparent discrepancy is unexplained, there is no evidence that the true number is outside of this range. To my mind, even the lowest of the figures given, when compared to the number of bedspaces available, would seem to clearly indicate a significant shortage of purpose-built accommodation. Therefore, despite my view that evidence of need is unnecessary, it seems to me that such information as is available points to the conclusion that a need for the development has been adequately demonstrated.
10. I note the Council's doubts regarding whether the appeal proposal could be counted as part of its 5-year housing supply. However, this seems to me a completely separate matter. In this regard I am fully aware of Planning Practice Guidance paragraph 68-034-20190722, but that advice seems to me to be purely about how to calculate the equivalent number of non-student dwellings that would be released. It has no bearing on the question of whether student accommodation falls within the realms of 'residential development' for the purposes of SAP Policy SP27.
11. For the reasons set out above, I am satisfied that the appeal proposal would accord fully with the land-use requirements of Policy SP27. This being so, I conclude that the Council's apparent objection in RR1, to the principle of a development for student accommodation, cannot be justified.

Character and appearance

12. The proposal is for a development in two blocks of mainly five storeys. These would be taller than most of the existing development in Tye Road and Siloam Place, which comprises modern apartment blocks of three and four storeys. However, the scheme would be similar to this existing development in terms of its layout, proportions and general architectural style. In addition, the appeal proposal would be seen in the context of other recent developments in nearby Duke Street, which include numerous new buildings of five, six, seven and nine storeys. In this context, the scheme would not appear out of scale with its surroundings.
13. In the light of the above, it seems to me that the development now proposed would not be substantially taller than its neighbours. Nor would it significantly change the local skyline. The scheme would therefore fall outside the definition of 'tall buildings' in paragraph 9.158 of the Core Strategy⁵ (the CS). Consequently, CS Policy DM15 relating to tall buildings is not applicable. But in any event, it seems to me that the proposal would respect the area's existing character, and integrate with its surroundings, thus meeting the most relevant criteria of that policy, and also those in CS Policy DM12, which seeks more generally to promote good design.

³ Email from N Lucker, University of Suffolk, dated 31 May 2022 (Appendix 1 of Design & Access Statement)

⁴ Lindsey Lock, BNP Paribas Statement (undated)

⁵ The Ipswich Borough Council Local Plan Core Strategy and Policies Development Plan Document Review, adopted March 2022

14. I therefore find no conflict with either of these policies, and conclude that the development would cause no significant harm to the area's character or appearance.

Living conditions of neighbouring occupiers

15. According to the Council, the main new 5-storey block, fronting onto Tye Road, would be sited approximately 16.5m from the existing apartments on the opposite side of that road. This would be less than the separation distance of 21m specified in CS Policy DM18. However, that policy makes it clear that this distance applies only between rear-facing elevations. In the case of front elevations, the policy does not set any specific minimum distance, and the explanatory text, at CS paragraph 9.172, shows that this is because the rooms and windows at the front of the dwelling are regarded as less sensitive than those at the rear. I see merit in this approach, as the spacing between building facades will often also be influenced by other design considerations, such as townscape, density and urban grain.
16. In the present case, the part of the appeal site that runs alongside Tye Road is long and narrow in shape, and this clearly imposes constraints on the design and layout of any development. The block now proposed for this part of the site would be close to the front boundary, being set back only slightly from the street. In this position, a 5-storey building would reduce the outlook from existing properties somewhat, but nevertheless it would be far enough away not to be unduly overbearing. There would also be some potential for mutual overlooking, but this would be partly mitigated by the distance. Having regard to the immediate context, the spacing between the opposing front elevations would be generally compatible with those elsewhere in Tye Road, and in Siloam Place. Overall therefore, it seems to me that the scheme strikes a reasonable balance between the need to minimise impacts on neighbouring occupiers, and the desirability of making effective use of the land.
17. I note the comments of some neighbouring occupiers regarding overshadowing and loss of light. However, using the existing consented scheme (IP/17/00570/FUL) as a baseline, the appellants' daylight and sunlight assessment shows that the effects on either the Vertical Sky Component or the No Sky Line at neighbouring properties would be no more than minor, even in the worst cases. The assessment also shows that all windows would continue to receive adequate sunlight, meeting the recognised guidelines of the Building Research Establishment.
18. In the light of the above, I am satisfied that the proposed development would avoid any unacceptable loss of amenity for neighbouring occupiers, and thus would protect their quality of life, as required by CS Policy DM18. CS Policy DM20 relates to houses in multiple occupation, and is therefore not relevant in this case, but in any event, for the reasons already explained, I consider that the requirements of that policy relating to privacy would not be infringed in this case.
19. Again therefore, I find no conflict with either of these policies. I conclude that the development would not lead to any unacceptable harm to living conditions at neighbouring properties.

Amenity space

20. In the SAP, the appeal site forms the major part of site IP142. Site-specific constraints for the site are listed in Table 5. These include that the development on the site should provide 25% public open space. In addition, CS Policy DM7 states that all residential developments should incorporate well-designed and located private outdoor amenity space. Quantified standards are specified for different types of housing. Such spaces should be accessible to occupiers, and be functional, having regard to the type of housing proposed. The stated purpose is to ensure a high quality and sustainable environment.
21. In the present case, the appeal proposal would offer no useable outdoor amenity space of any kind, either public or private. The scheme would provide some small areas of landscape planting, but most of these would not be suitable as amenity space, due to their small size, and their location adjacent to habitable room windows. All of the remaining space within the site would be taken up by pedestrian routes, cycle and bin storage, and a vehicle yard. Indoor facilities, such as the proposed gym or other communal spaces within the building, would not satisfy the policy requirement for outdoor space; nor would the provision of these facilities compensate for the lack of on-site opportunities for sitting-out and passive recreation in the open air. In the absence of any usable outdoor open space provision, it seems to me that the aim of ensuring a high quality living environment would be unfulfilled.
22. Policy DM7 allows for reduced levels of amenity space, where necessary to meet specific density or design requirements in other policies. In this case, CS Policy DM23 seeks a density of at least 90 dwellings per hectare in the waterfront area, which includes the appeal site. But in the submissions before me there is no suggestion, let alone any evidence, that this requirement prevents the inclusion of some amenity space. And in any event, the site-specific requirement in the SAP contains no similar exception clause. Considering the two policies together, I find no clear policy basis for any reduced level of provision at the appeal site, and thus no justification for nil provision, as now proposed.
23. The appellants assert that the approach of providing no amenity space is supported by the submitted viability report. But although that report assesses two alternatives, of 172 bedrooms and 134 bedrooms respectively, it does not directly address the present proposal for 160 bedrooms. Nor does it consider any other options which would include amenity space. Indeed, as far as I can see, the report makes no reference to amenity space at all. I therefore find nothing in the evidence before me regarding the effects on the scheme's viability.
24. I appreciate that public open space is available nearby at Holywells Park, and that the university's sports recreation facilities elsewhere would be available to all students. But the intention of the policies that I have identified is clearly to secure private, on-site provision.
25. I am aware that some amenity space has been provided on other land within the IP142 allocation, as part of the development permitted under IP/17/00570/FUL, now known as Tollesbury House. But as far as I am aware, there is no suggestion that this would be sufficient to meet the needs arising from both developments. Nor is there any evidence that it would be available to occupants of the development now proposed. In the absence of any further

information regarding the development already carried out, I am unable to form any conclusions as to the possible role of this existing amenity space.

26. I conclude that the proposed development would fail to meet the requirements of either Policy DM7 or SAP site IP142 with regard to the provision of outdoor amenity space. As a result, the scheme would fail to provide satisfactory living conditions for its future occupiers.

Section 106 obligations

27. The Council's RR4 relates to a financial contribution that is sought to the Suffolk Coast Recreational Disturbance Avoidance Mitigation Strategy (the RAMS), which is designed to secure mitigation for the impact of developments on internationally designated habitats. RR5 relates to contributions that have been requested in respect of waste management, public open space and monitoring. These requests are justified by the Council by reference to CS Policies DM8 and CS17 respectively.
28. The appellants state that they accept the need for the requested contributions, and are willing to enter a binding legal agreement to this effect. A draft heads of terms document has been prepared. However, it appears that no actual agreement or undertaking has yet been entered into, and indeed there is nothing in the submissions before me to suggest that discussions have progressed any further. I can only give weight to an obligation that has been fully agreed and executed prior to my decision, and is therefore legally enforceable as from that date. In this case, whilst I have no reason to doubt the appellants' intentions, there is no such executed obligation before me.
29. The Planning inspectorate's Procedural Guidance makes it clear that, in written representations appeals, where the appellant wishes to rely on a Section 106 obligation, a certified copy of the executed deed should be submitted no later than seven weeks after the appeal start date. That date is now long past. Whilst some discretion is available to inspectors to extend that timescale in appropriate cases, this does not appear to me to be such a case, for several reasons. Firstly, there is no evidence of any actual draft agreement having been prepared or discussed between the parties. Secondly, there has been no request for any extension of time. Thirdly, I note from the comments made by Suffolk County Council (SCC) that there may be a need for any new agreement to be accompanied by a deed of variation to the earlier agreement in respect of the development already carried out; this suggestion has not been rebutted. And fourthly, I am also aware of SCC's view that any new agreement should be broadened out to cover various other matters including education, libraries and highways, and although those additional requests are apparently not currently supported by the Borough Council, it seems quite possible in these circumstances that any further discussions at this stage could become protracted.
30. Furthermore, and in any event, it seems to me that the conclusion that I have reached above with regard to the lack of on-site amenity space must weigh heavily in the overall planning balance. There is no suggestion in any of the submissions made that this issue would be overcome by any of the proposed contributions.
31. In the light of all these matters, I consider that it would not be in the interests of any party, nor those of good administration, for me to delay my decision to

allow time for a Section 106 agreement, or undertaking, to be drawn up and executed.

32. Given that the need for contributions to the RAMS, and to waste management, public open space and monitoring, are all agreed matters, it is clear that the lack of a legally binding mechanism to secure these contributions represents a substantial obstacle to any grant of planning permission. In these circumstances, I conclude that in the absence of a Section 106 agreement or undertaking, the proposed scheme would be likely to result in unacceptable harm to protected habitats, and to existing open spaces and waste management facilities, contrary to Policies DM 8 and CS17.

Other matters

33. I have had regard to all the other matters raised, including those relating to traffic, parking, drainage, and the health effects of nearby telecommunications masts, as well as the additional contributions requested by SCC, and the concerns of the Highway Authority and Lead Local Flood Authority. But in view of the conclusions that I have reached on the matters set out above, none of these other matters affects the outcome of the appeal, and it is therefore not necessary for me to consider these in further detail.

Conclusion

34. For the reasons set out above, I have found that, in terms of land use, the appeal proposal would accord with SAP Policy SP27 with regard to the use of the site for the purposes of student accommodation. However, the proposed scheme would conflict with the SAP's site specific requirements for site IP142, and those of CS Policy DM7, due to its failure to provide any on-site open space. It would also fail to provide any mitigation for its own likely impacts on protected habitats and on local infrastructure, contrary to CS Policies DM8 and CS17. I have found no significant harm to the area's character and appearance, or to the living conditions of neighbouring occupiers, and thus no conflict with any relevant policies in these respects. Looking at the development plan as a whole however, it seems to me that, on balance, the scheme would fail to accord with the plan's most relevant policies.
35. The development would bring some benefits. It would add to the local housing stock, and it would support the growth of the University. I have given these some weight. The scheme would also be likely to generate local expenditure and investment, with benefits to the local economy, but in the absence of any information on these matters, I can give only modest weight to this. Overall, these considerations in favour are outweighed by the conflicts with the development plan, and the resulting harm, that I have identified.
36. The appeal is therefore dismissed.

J Felgate

INSPECTOR