



Appeal Decision

Site visit made on 13 March 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2024

Appeal Ref: APP/J1915/W/23/3319338

Land at Crane Mead, Ware, SG12 9FF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Unique Floors Limited against East Hertfordshire District Council.
 - The application Ref is 3/22/1548/FUL.
 - The development proposed is a new three storey residential block comprising one 2 bed four person dwelling and two 1 bed two person dwellings per floor with a total of 9 apartments. The scheme will also include cycle and bin storage, creation of private balcony space as well as shared amenity space from the new block to the river lea, landscaping hard and soft planting, car parking including visitor parking.
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Decision

1. The appeal is dismissed and planning permission refused.

Main Issues

2. These are:
 - The effect of the proposed development on the character and appearance of the area, including a non-designated heritage asset (Weir Keepers Cottage);
 - The effect on land designated as Local Green Space;
 - Whether the proposed development would be suitably located having regard to the risk of flooding; and
 - The effect on biodiversity.

Reasons

Character and appearance

3. The appeal site is an undeveloped and unkempt piece of land adjacent to the towpath that runs along the River Lee Navigation. There is a footpath along its western side that links to the towpath. It is situated between two blocks of flats at Loxley Court and Coopers Court. The area of Crane Mead has an industrial history but over recent years much of that activity has been replaced by residential development.
4. The scale of the proposed three-storey block would be consistent with its surroundings. The design takes its cue from the adjoining buildings with pitched roofs, an irregular plan form and the use of light red and yellow bricks. Whilst not especially inspiring or redolent of a waterfront location, this approach is an appropriate one due to its similarity with the immediate

- neighbours. Furthermore, there would be a reasonable space around the proposal compared to the other high-density buildings nearby.
5. However, the detailed execution of the facades would be disappointing. In particular, the fenestration in the front gable would be small and mean and so would give rise to a poorly proportioned elevation. The side walls would be prominent in views along the footpath but they would be mundane with little articulation or visual interest.
 6. More significantly, the proposal would be much closer than Loxley and Coopers Courts to the River Lee Navigation. There are other waterside buildings near it and a decent sized area would be kept between the building and the waterway as amenity space. However, the alignment of the proposed building would noticeably and oddly protrude beyond the adjoining buildings. It would be seen in this context rather than in relation to the bend in the river. In view of this, and notwithstanding the comparable design, the proposal would not sit at all comfortably between the flatted buildings on either side.
 7. The Ware Neighbourhood Plan identifies Weir Keepers Cottage at Tumbling Bay as a non-designated heritage asset as it makes a positive contribution to the historic setting of the River Lee Navigation. This modest building has recently been renovated. Whilst attractive in appearance, its main significance is due to the long-standing linkage with the adjacent weir and the Navigation.
 8. The proposal would bring about a change to the wider setting of the cottage, even though it would be on the opposite bank. Some views of it across the appeal site would be obstructed. However, glimpses would still be possible and this vista is not so special that it should be retained at all costs. Indeed, because of their separation, the proposed building would not spoil the setting of the cottage or dilute the appreciation of its associations with the water. As its significance would not be harmed, there would be no conflict with Policy W3 of the Neighbourhood Plan or with Policy HA2 of the East Herts District Plan.
 9. Nevertheless, the proposal would harm the character and appearance of the area due to its siting and aspects of the detailed design. As it would not be of a high standard of design and layout to reflect and promote local distinctiveness, there would be conflict with District Plan Policy DES4. It would also be at odds with Neighbourhood Plan Policy W2 which seeks to reflect the character of Ware through high quality design.

Local green space

10. Policy W13 of the Ware Neighbourhood Plan includes the appeal site within a larger area of land alongside the River Lee Navigation which is designated as Local Green Space. Appendix 1 contains analysis of the value of this area which is said to make a vital contribution to the open vista along the Lea Valley between the Town Bridge and Hardmead Lock. The appeal site adds to its attributes in this respect and is also a green wedge of undeveloped land between the blocks on either side. This provides a pleasing contrast to the surrounding built form.
11. The National Planning Policy Framework explains that the designation of Local Green Space allows communities to identify and protect green areas of particular importance to them. This is what has happened through the Neighbourhood Plan. District Plan Policy CFLR2 establishes that development

will only be permitted if it is consistent with the function, character and use of the Local Green Space to which it relates. The substantial three-storey building proposed fails that test as it would significantly reduce the important open character of the land and fill the gap that it creates. All of its existing qualities would be irrevocably lost contrary to the intentions of local policy.

12. The Framework observes that policies for managing development within a Local Green Space should be consistent with those for Green Belts. This is reflected by Policy W13. However, given that the proposal falls foul of the policy in the District Plan there is no need to undertake a separate exercise to assess this.
13. To sum up, the proposed development would significantly harm the function, character and use of the Local Green Space between Crane Mead and the River Lee Navigation. It would not accord with Policy CFLR2.

Risk of flooding

14. Because of its proximity to the River Lee Navigation, the appeal site is at risk of fluvial flooding. There is nevertheless no record of it having flooded since 1968 and the Environment Agency's flood maps indicate that the risk of flooding is low. It benefits from flood defences. However, the land lies within flood zones 2 and 3a which are defined in the Planning Practice Guidance (PPG) on *Flood risk and coastal change* as having a medium and high probability of flooding.
15. The Framework establishes that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. In this respect, greater attention should be given to national policy than past events. Because of its location, the proposal should be subject to a sequential test as stated in District Plan Policy WAT1. This aims to steer new development to areas with the lowest risk of flooding from any source.
16. Details about the sequential test are included in the PPG. It should show that there are no reasonably available, lower-risk sites that are suitable for the proposed development. However, no such exercise has been undertaken and there is nothing to indicate that no part of the District is within flood zone 1. As a result, the proposal would not accord with the expectations of either national policy or Policy WAT1.
17. In response to the Environment Agency, the appellant produced an Addendum to the original Flood Risk Assessment. However, even if compensatory floodplain storage could be achieved, this does not alter the failure to first undertake a sequential test. The PPG confirms that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.
18. In conclusion, because of the absence of a sequential test, there can be no confidence that the proposal would be in an area at the lowest risk of flooding for development of this kind. To accept the proposed flats here would be wholly contrary to the intentions of both local and national policy. Therefore, the proposed development would not be suitably located having regard to the risk of flooding and would conflict with Policy WAT1.

Biodiversity

19. At the time of the survey for the Preliminary Ecological Appraisal the appeal site comprised short, improved grass with a small area of semi-mature shrubs

and trees. It was therefore generally of low ecological value with no signs or evidence of protected, priority or rare species. The Appraisal makes various recommendations and concludes that these would result in a biodiversity net gain. Landscaping would be undertaken.

20. However, vegetation has been cleared from the site. A local resident indicates that a small copse was removed in 2020. Furthermore, the site is now overgrown with scrub, brambles and signs of natural regeneration. Policy NE2 of the District Plan generally expects all proposals to achieve a net gain in biodiversity as measured by a locally approved metric. It is unclear what the 'baseline' for assessment should be and no formal calculation of the overall implications for wildlife and habitats has been undertaken. Given the specific requirements of Policy NE2 this amounts to a further objection to the proposal.
21. It has not been clearly shown that the effect on biodiversity would be a positive one and the proposed development would not comply with Policy NE2 in this respect. Furthermore, it has not been demonstrated how negative impacts would be minimised and biodiversity net gain achieved in line with Policy W12 of the Neighbourhood Plan.

Other Considerations

22. The latest position statement indicates that the Council can demonstrate a housing supply of 5.57 years against its five-year requirement of 5,560. The appellant's only observation in this respect is that most of the housing is not deliverable until after 2026 and is subject to planning approvals being given.
23. The bulk of the supply (4,765 homes) has planning permission and can be expected to be delivered within five years. The Council has provided evidence, including information from developers, about the progress being made in respect of eleven allocated sites where there is no planning permission. It has taken a pragmatic approach and expects that 1,126 dwellings will be delivered from these sources by 2028. The appellant does not suggest that "clear evidence" of delivery has not been provided. Even if there is slippage then the supply requirement is comfortably exceeded.
24. In any case, as the appeal site is within an area at risk of flooding and is Local Green Space these provide clear reasons to refuse the development proposed. Therefore, even if there were no five-year housing land supply, the presumption in favour of sustainable development at paragraph 11 d) of the Framework would not apply. Nevertheless, the indications are that the supply of housing in East Hertfordshire exceeds Government expectations.
25. The proposal would create nine additional residential units which the appellant is ready to implement. These would be located within the urban area of Ware and would conform with District Plan Policy DPS2 which seeks to direct development in the District to sustainable locations. It would also contribute to the figures for windfall development and the town of Ware is expected to accommodate a proportion of this as set out in Policy WARE1.
26. None of the other matters raised in representations, including parking provision, congestion and the impact on adjoining occupiers, amount to objections to the scheme for the reasons given in the report to Committee.

Final Balance

27. The proposed development would add to the supply of housing and its location within Ware would be in line with the spatial strategy for the distribution of new housing across the District. However, there are significant objections in terms of the adverse effect on the character and appearance of the area and on an area of Local Green Space. Due to the absence of a sequential test, it has not been shown that the proposal would be suitably located having regard to the risk of flooding from the River Lee Navigation and biodiversity enhancements have not been demonstrated. The housing supply position does not provide a compelling reason to set these objections aside.

Conclusion

28. Therefore, the proposal would not accord with the development plan as a whole and the material considerations in favour do not outweigh this finding. For the reasons given, the appeal should not succeed.

David Smith

INSPECTOR