
Appeal Decision

Site visit made on 6 March 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 May 2024

Appeal Ref: APP/B5480/W/23/3321867

Viking Way Land, Viking Way, Rainham RM13 9YT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr McLaughlin against the decision of the Council of the London Borough of Havering.
 - The application Ref is P2092.22
 - The development proposed is the construction of a three storey residential building comprising 9 dwellings (4 x 1-bedroom, 4 x 2-bedroom and 1 x 3-bedroom) with private amenity spaces, 5 on-site car parking spaces, communal amenity space, cycle and bin storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has confirmed that they consider that in the event of the appeal being allowed, the potential for archaeological remains on site could be addressed through the use of appropriate planning conditions. As such, the effect of the proposal on archaeology is not a main issue.

Main Issues

3. The main issues are the effect of the proposal on:
 - the character and appearance of area, including whether it would preserve or enhance the Rainham Conservation Area (CA);
 - whether suitable living conditions would be created, with reference to floorspace, private amenity space, outlook and accessibility;
 - highway safety with particular regard to parking provision, refuse storage and cycle storage; and
 - flood risk.

Reasons

Character and appearance

4. The appeal site lies within the Rainham CA. The statutory duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.

5. The CA is compact, focussed around Rainham Parish Church, Rainham Hall and the two main streets which converge adjacent to the church. The main streets contain long frontages of 18th and 19th Century shops developed on small plots. Traditional timber framed shopfronts are characteristic, with the largely two storey development with brick or render finishes topped by steeply pitched roofs. The significance of the CA is largely derived from the dense pattern of development on small plots around the church, church yard and Rainham Hall, along with the form of development including pitched roofs and use of brick, render and timber framed windows.
6. The appeal site is a vacant former car park, presenting street frontages to Viking Way and Parkway. It is in a prominent location on the north-western edge of the CA; highly visible when approaching by car or on foot along Viking Way. The site also runs adjacent to a public space which leads onto a pedestrian footpath linking Viking Way with Upminster Road South, through which there are views of the rear of the historic terraces to the south.
7. The appeal proposal comprises a residential building over three floors, with a rusticated render base, stone quoins and a brick finish to the first and second floors along with a flat roof. Parking, refuse and cycle storage would be accessed from Parkway to the rear of the site; it would contain nine flats.
8. The bulk, mass and height of the proposed building would relate more to the taller development to the west which is outside the CA. The footprint, mass and scale would be at odds with the established pattern of development within the CA, which, whilst densely packed, is of a smaller, tighter grain due to the historic plots. The detailed design and proposed articulation would not break up the large scale and mass of the building sufficient to successfully fit with the more intricate style of development in the CA. The proposed flat roof form would fail to relate to the surrounding townscape, creating an awkward juxtaposition with the pitched roof forms of adjacent residential units on Viking Way.
9. Whilst I acknowledge the reference point of Rainham Hall in the design rationale, Rainham Hall itself as a historic listed manor house set in substantial grounds, is a landmark building and a one-off within the CA. Given such, I am not persuaded that this is an appropriate design reference for a flatted development in a significantly different setting.
10. The appeal site in its vacant state does not contribute positively to the CA, and I agree is a clear candidate for redevelopment. I also note that there are poor design precedents along Parkway and interested parties have referred to fly tipping within the site. However, the opportunity the site represents does not negate the need for any redevelopment to be of a design which is appropriate within the CA.
11. For the reasons set out above, and given the scale of the proposals, I find that there would be less than substantial harm caused to the significance of the CA, the character and appearance of which would not be preserved.
12. There is a presumption against development that would have a harmful impact upon a Conservation Area through S.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Framework also explains that great weight should be given to the conservation of designated heritage assets. Paragraph 206 informs us that any harm to the significance of a designated heritage asset

should require clear and convincing justification. Paragraph 208 goes on to require decision makers to weigh any less than substantial harm to such an asset against the public benefits of the proposal.

13. That exercise takes place here within the context of the Council acknowledging that it is unable to demonstrate a five-year supply of deliverable housing sites. Whilst I have no details as to the extent of the shortfall, I note that the latest housing delivery test result stands at 78%.
14. The scheme would contribute to addressing the housing shortfall by providing nine flats on a highly accessible brownfield site. The plan area is comparatively constrained in other places by the Green Belt. Some socio-economic benefits would also stem from future occupants bringing trade to nearby shops and services. Whilst there are some clear public benefits to the proposal, they are not sufficient to outweigh the identified less than substantial harm to the significance of the designated heritage asset. Therefore, the proposal would not accord with the policies of the Framework and the development plan which seek to conserve and enhance the historic environment.
15. The proposal, therefore, would conflict with Policies 7, 26 and 28 of the Havering Local Plan adopted 2021 (HLP). These policies, amongst other things, require development to be of high architectural quality and design, to respect or complement the distinctive qualities, identity and character of the local area as well as supporting proposals that conserve, enhance or better reveal the character and appearance of an area and its significance.

Living conditions of future occupiers

16. Unit 1, comprising a duplex 2-bedroom, 3 person unit over ground and first floors would measure 68 square metres, falling 2 square metres short of the 70 square metre minimum standard for duplex units of this occupancy set out in Policy D6 of the London Plan. I acknowledge the appellant's point that the floorspace would comply with the minimum standard had it been a single storey, and that the layout is somewhat influenced by the need for sleeping accommodation at first floor due to flood risk. Nevertheless, the standards are a minimum and the higher figure for 2-floor units takes into account additional circulation space necessary in a 2-floor unit. The circumstances presented by the appellant, including the triple aspect and access to private amenity space, do not justify falling short of a minimum floorspace standard.
17. At second floor, the recessed balconies to units 6, 7, 8 and 9, whilst in line with the expectations of the development plan in terms of their size, would be very enclosed given the small window style openings. Due to their small openings and orientation, I am not persuaded that the recessed balconies would receive sufficient light to provide a functioning recreational space and would not offer a genuine, sufficiently useable external space. Whilst these units would still have access to the small communal recreation area at the front, this would not be particularly convenient given the second-floor location of the affected flats. Likewise, the availability of public open space nearby does not diminish the need for future occupants to have adequate private outdoor space of their own.
18. The proposed hedges and 1.5m railings to the north and west boundaries and within the appeal site itself would offer the main habitable rooms at ground floor some protection from overlooking from the adjacent public space. This protection from overlooking, however, would be at the cost of the outlook from

the main habitable rooms to the maisonettes. The use of hedges and railings for privacy would have the effect of harming the outlook from the living areas of flats 1, 2, 4 and 5 due to their close proximity to the boundary treatments. These flats would as a consequence have a very restricted outlook at ground floor level.

19. London Plan Policy D7 aims to provide suitable housing and genuine choice for London's diverse population, including disabled people, older people and families with young children. The policy essentially requires that 10% of new build dwellings meet Building Regulation requirement M4(3) 'wheelchair user dwellings' and the remaining 90% meet M4(2) for accessible and adaptable dwellings. This standard requires step-free access into dwellings. There is a caveat in Policy D7 which states that in blocks of four storeys or less it may be necessary to apply some flexibility on some development types including small scale infill developments. In that case, Policy D7 stipulates that M4(2) and M4(3) dwellings should still be provided at ground floor level.
20. Whilst I acknowledge that this site is a small site for the purposes of the London Plan and there are necessarily constraints on the layout of units due to flood risk issues, no substantive evidence has been provided to demonstrate that it would not be possible to achieve the requisite number of M4(2) or M4(3) compliant units in the appeal proposal, even without a significant lift overrun. The evidence does not lead me to conclude that any exception to the requirements of the development plan would be appropriate in this case.
21. Taken together, the issues described above have the effect of not achieving a suitable standard of accommodation with reference to floorspace, private amenity space, outlook and accessibility. The proposal would therefore conflict with the aims of Policies D6 and D7 of the London Plan 2021 and Policy 7 of the Havering Local Plan adopted 2021, all of which aim to achieve, amongst other things, high quality residential design.

Highway Safety

22. Five parking spaces are shown on the proposed drawings, with four being located to the south side of the development, along with one further space within an existing car park to the south which is within the ownership of the appellant. The drawings show that four parking spaces, the refuse store and cycle store shown to the south side of the development site would encroach upon adopted highway. Whilst the appellant has provided evidence that the land is within their ownership, this is immaterial to the adopted highway status.
23. The proposed parking spaces and refuse store would cause an obstruction to the highway and would not allow sufficient space for people using the footway to safely pass the site without being forced to use the road, creating a conflict with footway users and vehicles accessing other properties. The arrangement would not provide safe and convenient access to the refuse and cycle storage or parking spaces, given the identified conflict with the adopted highway. This would run contrary to Policies 23 and 24 of the Havering Local Plan and Policies T5 and T6 of the London Plan 2021. These policies, amongst other matters, support development which ensures the safe and efficient use of the highway and which has appropriately located and designed parking and cycle storage.

Flood risk

24. The appeal site lies within flood zone 3a, with the proposed dwellings being classed as a 'more vulnerable' use. The FRA submitted with the appeal has applied the sequential test, as required by the National Planning Policy Framework (the Framework), which seeks to steer new development to areas with the lowest risk of flooding from any source. The FRA advises that no sequentially preferable sites in areas at lower risk of flooding are available and I have been provided with little evidence that the Council disagrees with this view.
25. The FRA then goes on to apply the exceptions test. This is required by the Framework, which establishes that to pass this test, it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk, and the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
26. There would be benefits to the wider community from redeveloping this brownfield site, and the proposed residential use would contribute to the Council's housing supply. The proposal incorporates a range of measures to address the aims of the Framework. These include the introduction of permeable areas through gardens and landscaping, the provision of soakaways, permeable finishes for the hardstanding, sleeping accommodation at first floor and above, along with various flood-resilient features in the construction at ground floor level.
27. I am satisfied that the submitted FRA has addressed the matters set out in the Framework and Planning Practice Guidance. It is consistent with the aim of paragraph 165 of the Framework to ensure that development in areas of flood risk is safe for its lifetime without increasing flood risk elsewhere.

Planning Balance and Conclusion

28. In adopting the Local Plan in 2021, the Inspector acknowledged that whilst there was not a demonstrable 5-year supply, given the increase in the requirement at a late stage in the examination, the plan was found to be sound subject to immediate review. The Council confirm that this review has not been completed, and therefore paragraph 11d) of the Framework is applicable.
29. However, paragraph 11 d) i) states that there are circumstances where the application of policies in the Framework to protect areas or assets of particular importance provides a clear reason for refusing the proposal. Footnote 7 identifies designated heritage assets to be of particular importance, and as I have found that the proposal would cause less than substantial harm to the CA without sufficient public benefits, it follows that the appeal proposal does not benefit from the presumption in favour of sustainable development set out in paragraph 11 d) ii) of the Framework.
30. The less than substantial harm I have identified to the CA, and the harm to the living conditions of future occupiers and to highway safety draw the proposal into conflict with the development plan read as a whole. The material considerations in this case, including the aforementioned public benefits of the scheme, do not indicate that the decision should be taken otherwise than in

accordance with the development plan. The appeal should therefore be dismissed.

L Francis

INSPECTOR