



Appeal Decision

Site visit made on 5 April 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2024

Appeal Ref: APP/B5480/W/23/3329650

Havering College of Further and Higher Education, Tring Gardens, Romford RM3 9ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Bellway Homes against the decision of the Council of the London Borough of Havering.
- The application Ref is P0542.23.
- The application sought planning permission for the demolition of existing buildings and redevelopment of the site to provide 120 residential dwellings comprising 78 houses and 42 flats (1 bed x 12, 2 bed x 53, 3 bed x 55) with associated car parking, landscaping, open space, play space and infrastructure without complying with a condition attached to planning permission Ref P0883.20, dated 1 February 2022.
- The condition in dispute is No 8 which states that: At least 10 per cent of the dwellings hereby approved shall be constructed to comply with Part M4(3) of the Building Regulations - 'wheelchair user dwellings'. The remainder of the dwellings hereby approved shall be constructed to comply with Part M4(2) of the Building Regulations - 'accessible and adaptable dwellings'.
- The reason given for the condition is: In order to comply with Policy D7 of the 'London Plan' 20121.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. There is an obvious typographical error in the wording of the reason given for the condition which refers to the London Plan 20121. The correct document, as highlighted in the submitted evidence, is the London Plan 2021. It has not been necessary to clarify this with the parties.

Main Issue

3. The main issue is the effect of removing or varying the condition on the provision of accessible housing.

Reasons

4. Planning permission was granted for 120 dwellings at the former Havering College of Further and Higher Education. This consent was subject to, amongst others, a planning condition requiring that at least 10 per cent of the dwellings should be constructed to comply with Part M4(3) of the Building Regulations -

- 'wheelchair user dwellings', with the remainder of the dwellings to be constructed to comply with Part M4(2) of the Building Regulations - 'accessible and adaptable dwellings'.
5. The evidence shows that the reason for the policy draws from the requirement of Policy D7 (Accessible Housing) of the London Plan (2021) which states that to provide suitable housing and genuine choice for London's diverse population, including disabled people, older people and families with young children, residential development must ensure that: 1) at least 10 per cent of dwellings (which are created via works to which Part M volume 1 of the Building Regulations applies) meet Building Regulation requirement M4(3) 'wheelchair user dwellings' 2) all other dwellings (which are created via works to which Part M volume 1 of the Building Regulations applies) meet Building Regulation requirement M4(2) 'accessible and adaptable dwellings'.
 6. The requirements of Policy D7 of the London Plan are echoed in Policy 7 of the Havering Local Plan (2021) which outlines that the Council will require 90% of new build housing to meet Building Regulation requirement M4(2) 'Accessible and Adaptable Dwellings', with the remaining 10 percent meeting Building Regulation requirement M4(3) 'Wheelchair User Dwellings'.
 7. The Council refused an application to vary the condition as they considered it would fail to provide accessible or adaptable housing to ensure dignified and independent living accommodation and to ensure people remain in their homes rather than having to move due to inaccessible accommodation.
 8. The appellant has outlined how, following a subsequent detailed design review it was determined that it was not possible for a number of houses in the approved layout to meet the car parking requirements set out at M4(2) of the Building Regulations. The ability for the dwellings to meet the requirements internally is not in dispute.
 9. Having regard to Policy D7 and Policy 7, which form part of the statutory development plan, the imposition of condition 8 has a sound policy basis, is reasonable, and is necessary to make the development acceptable in planning terms.
 10. The appellant suggests that the condition is not precise as it does not specify the number and type of dwellings which are required to comply with the requirements, and this is set out in the supporting text of the policy. Although the supporting text does not have the same weight, it is relevant to the interpretation of the policy. It cannot, however, 'trump' the policy or insert new requirements. Whilst I agree that a specific figure would arguably have provided a greater degree of certainty, the requirement for part of the condition to apply to 10% (of 120 - that being the total number of dwellings), and another part of the condition to apply to the remainder of the dwellings, is not as unclear or ambiguous to render the condition as not precise.
 11. Reference is made to whether or not the parking spaces would constitute private in curtilage parking and thus fall within the scope of M4(2) 2.12(a). It would seem to me that parking spaces that are private, adjacent to a dwelling and clearly not part of the public realm would constitute private in curtilage parking. Parking spaces that are separated from the dwelling (not in curtilage) and form part of a communal parking area are subject to a separate requirement as outlined in 2.12(b). Although this requirement specifies parking

for blocks of flats. Even if residents have a specific right to use a particular space, unless it is closely related in function and physicality to the property, I would not be of the view that this would constitute 'curtilage' for the purposes of M4(2) 2.12(a). Whether or not, however, the spaces in question are private in curtilage parking does not diminish the significance which I have found of imposing the condition on the development.

12. The appellant has commented on the reference in the supporting text of Policy D7 to residential disabled persons parking requirements referring to Policy T6.1. This reference is contained within the supporting text and not the policy itself. Policy T6.1 is however concerned with residential parking and Policy D7 is concerned with accessible housing, which may rightly include parking. I do not agree with the suggestion that Policy D7 is solely intended to ensure step-free access and does not intend to deal with matters of car parking. It is clear what it intended, that being compliance with the relevant building regulation, and that regulation includes parking. If the purpose of the policy was to provide everything in the regulation except specific parking, it would have said so.
13. The appellant has outlined how that based on the approved drawings they are unable to provide M4(2) compliant car parking and are therefore unable to build out this permission without being in breach of Condition 8. It follows, as the appellant outlines, that condition 8 requires that the scheme be amended before the development can lawfully be built out, which, they consider is unreasonable.
14. I acknowledge the element of inconsistency between the approved plans and the requirements of condition 8 as put forward by the appellant. This inconsistency, however, applies both ways. The appellant, understandably, sees preference in varying condition 8 as this would allow implementation of the plans as approved, suggesting that to do otherwise would place a financial burden on them and would impact on the viability of the scheme.
15. There is no substantive evidence before me to suggest that compliance with condition 8 would have unreasonable financial implications, or that it would render the scheme unviable. In the absence of such evidence, I give this limited weight in the appeal.
16. The appellant refers to the requirements of M4(2) and M4(3) as optional. Whilst this may be the case in terms of the application of Part M from a Building Control perspective, it is clear that the intention of the development plan is to apply such requirements to developments. The S38(6) duty would be to comply with the requirements of the policy unless material considerations indicate otherwise. This suggests something stronger than merely 'optional' for the developer or the decision maker.
17. The condition is imposed as a direct response to the requirements of conditions D7 of the London Plan and Policy 7 of the Havering Local Plan and the S38(6) duty of the local planning authority. I therefore do not agree with the appellant's suggestion that imposing the condition goes beyond the powers (*ultra vires*) of the local planning authority.
18. To vary the requirements of condition 8 would result in a direct conflict with the requirements of the development plan. I am not convinced that the alternative means of delivering the consented scheme of 120 dwellings, that would be in accordance with the requirements of condition 8 would present an equivalent

conflict with the development plan. I also find that the wording of the condition is precise and given it sets out what is required for compliance, it would be enforceable.

19. I therefore find that removing or varying the condition would have a harmful effect on the provision of accessible housing and would be contrary to the requirements of Policy D7 of the London Plan (2021) and Policy 7 of the Havering Local Plan (2021). The reasons put forward by the appellant in terms of the implications of complying with the disputed condition do not outweigh the harm that would be caused to the provision of accessible housing.

Other Matters

20. The development would deliver housing on previously developed land. It would result in an increase in the Council's overall housing number. It would also bring a number of additional residents to the area who would contribute to the local economy. These are benefits that weigh strongly in favour of the appeal.
21. I have nevertheless identified that removing or varying the condition would conflict with policies designed to ensure the provision of accessible housing. These policies are consistent with the aims of the National Planning Policy Framework (2023) (the Framework) in terms of ensuring developments are inclusive and accessible. This alignment increases the weight given to the policy conflict. Therefore, the conflict with these policies results in the development conflicting with the development plan when taken as a whole.
22. Paragraph 11 (d) of the Framework requires that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, developments should be granted planning permission 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.
23. This applies to applications involving the provision of housing in situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The Council are unable to demonstrate a five-year supply of deliverable housing sites. It therefore follows that paragraph 11 d) of the Framework is engaged.
24. In terms of the proposed development, the starting point is therefore that permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits.
25. In this case the adverse impacts of the proposal in terms of the failure to provide sufficient accessible housing as required, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. These policies include a requirement for developments to create places that are inclusive and accessible for existing and future users.
26. The proposal does not therefore benefit from the presumption in favour of sustainable development given by paragraph 11 of the Framework.
27. Reference is made to the lack of objections from the Highways Authority. This is, however, a neutral factor in the balance. The lack of such an objection would not give reason to allow the appeal.

28. The evidence shows that the original planning permission was subject to a Section 106 Agreement. A successful application made under Section 73 has the effect of creating a new planning permission. Therefore, were I to have found that the variation of the condition did not cause harm to the provision of accessible housing a new, or varied, Section 106 Agreement would have been required. At the time of my decision, although a draft document was submitted and the appellant has indicated they are working towards submitting a variation, no such completed agreement, or varied agreement, is before me. As I am dismissing the appeal however, there is no need for me to pursue this matter any further.

Conclusion

29. I therefore find that condition No 8 is necessary and reasonably related to the subject matter having regard to the requirement to provide accessible housing.
30. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.
31. For the reasons given above, and having had regard to all other matters raised, I conclude that the condition should be retained in its current form and accordingly the appeal is dismissed.

A M Nilsson

INSPECTOR