

Appeal Decision

Site visit made on 18 June 2024

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 19th July 2024

Appeal Ref: APP/W0530/W/23/3333808

Land Parcel COM4, Neal Drive, Orchard Park, Cambridge

- 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) (Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Cammaro Limited against the decision of South Cambridgeshire District Council.
 - The application Ref is 22/03407/S73.
 - The application sought planning permission for erection of new private rented residential block comprising a total of eighty studio one and two bedroom apartments without complying with a condition attached to planning permission Ref S/4191/19/FL, dated 28 August 2020.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice.
 - The reason given for the condition is: In the interests of good planning, for the avoidance of doubt and to facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990.
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Decision

1. The appeal is allowed and planning permission is granted for erection of new private rented residential block comprising a total of eighty studio one and two bedroom apartments at Land Parcel COM4, Neal Drive, Orchard Park, Cambridge in accordance with the application Ref 22/03407/S73, without compliance with condition 2 previously imposed on planning permission Ref S/4191/19/FL dated 28 August 2020 and subject to the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by Cammaro Limited against South Cambridgeshire District Council. This is the subject of a separate decision.

Preliminary Matter

3. While I note the address stated in the decision notice and appeal form, I have used the address in the application form in the header above in the interests of certainty.

Background and Main Issues

4. The proposal seeks a variation of Condition 2 of planning permission for the erection of new private rented residential block comprising a total of eighty studio one and two bedroom apartments. The condition specifies the approved drawings. The proposed amendments include the removal of underground car

parking and associated structures, reduction in the length / depth of the new blocks with associated internal alterations to apartment mix, increased number of electric vehicle charge points, alterations to above ground car-parking including increase in total no. of car club spaces and external landscape alterations.

5. The main issues are the effect that varying the condition would have on:

- the living environment of future occupiers and the living condition of neighbouring occupiers with regard to the provision of car parking; and
- the character and appearance of the area.

Reasons

Car parking provision

6. The planning permission includes the provision of 47 car parking spaces with one car club space. The proposed removal of the basement level car parking would result in 26 parking spaces and two car club spaces. The spaces would serve 80 dwellings comprising studios, one and two bedroom apartments.
7. Policy TI/3 of the South Cambridgeshire Local Plan Adopted September 2018 (LP) requires that car parking provision should be provided through a design-led approach in accordance with the indicative standards set out in Figure 11. Figure 11 sets out that the indicative car parking provision is 2 spaces per dwelling.
8. It goes on to say that car parking provision will take into consideration the site location, type and mix of uses, car ownership levels, availability of local services, facilities and public transport, and highway and user safety issues.
9. The approved number of parking spaces falls short of the policy guidance. Accordingly, the proposed removal of basement parking would fall further short of Policy guidance. However, from the evidence the extant scheme was approved on the basis of 2011 Census data. Moreover, the car club space was agreed by the Highway Authority to equate to some 12 parking spaces.
10. The 2011 Census Data provided a car parking ratio of 0.63 spaces per unit which equates to a requirement of 50 parking spaces for the 80 residential units. Including the car club space, the approved scheme would provide the equivalent of around 50 spaces. On this basis, the proposed provision of car parking would meet the requirement.
11. Since the application was determined, the 2021 Census Data has been published which indicates a marginal change in vehicle ownership for the area since the 2011 Census Data. As such, given the evidence, the proposed number of parking spaces along with car club spaces would provide adequate levels of parking for the development. Therefore, the proposal would provide adequate provision of car parking for future occupiers. Accordingly, while the scheme would not comply with the parking standards set out in Figure 11, as LP Policy TI/3 states that the standards are indicative, and the car parking provision has taken into consideration factors such as site location, car ownership levels and availability of local services, the proposal would not conflict with the aims of this Policy.

12. I acknowledge the Council's concerns regarding the longevity of Community Car Clubs. However, the legal agreement secured as part of the approved scheme requires a scheme to be submitted to the Council for approval for the efficient operation of the Car Club for three years from the date of first occupation. I also note that the number of car club spaces are not stipulated in the legal agreement and could therefore be agreed as part of the scheme to be submitted with the Council. Therefore, a deed of variation is not necessary to secure the additional car club space.
13. Moreover, the site is in a sustainable location, with a number of services and facilities within walking distance including shops and school as well as bus services. Given the above, the proposal would not result in an unacceptable effect on highway safety or a severe residual cumulative impact on the road network. Therefore, a £10,000 contribution towards measures of preventing parking on junctions and footways within 200m of the appeal site is not necessary.
14. The car club spaces are proposed to be sited on Neal Drive, outside the red line boundary. I note the evidence regarding the introduction of parking restriction or resident parking schemes. However, as the spaces would be secured by the legal agreement which includes the provision of car club spaces either at the property or adjacent to the property on public highway, this matter has not altered my overall finding on this main issue.
15. I also acknowledge local evidence regarding increase in number of cars in Orchard Park, pavement parking, travel to schools and public transport. However, as I have found that the proposal would meet the car parking requirement, it would be unlikely to result in on-street parking to an extent that would harm the living conditions of neighbouring occupiers.
16. Consequently, varying the condition would not harm the living environment of future occupiers and would not harm the living condition of neighbouring occupiers with regard to the provision of car parking. Therefore, the proposal would not conflict with LP Policies HQ/1 and TI/3 which seek, among other things, integrated car parking and car parking provision provided through a design-led approach.

Character and appearance

17. The approved scheme includes an area of landscaping to the south of Block A as well as landscaping around the boundary of the site and surrounding the blocks of flats such that the site would have a pleasant relatively verdant character compared with the surrounding properties that benefit from limited areas of front gardens.
18. The proposed removal of the basement would result in the loss of some landscaping at the southeastern part of the site and a lack of continuous landscaping strip along the southern boundary compared with the approved scheme. However, in numerical terms, the loss of landscaping would be some 33sqm which would be roughly 6% of the approved landscaping area and would be a minor reduction.
19. Moreover, landscaping would be retained at the south of Block A and some landscaping would be introduced in front of the entrance area to Block A compared with the approved scheme, breaking up the car parking in this area.

In addition, the vehicular access would still have landscaping on either side to the south of Block B and a landscaping strip would separate the pedestrian route from the vehicular access road in this area.

20. While the proposed parking to the south of Block A would be directly adjacent to the pedestrian path, some landscaping adjacent to Chieftain Way would be retained, resulting in the site retaining a pleasant and relatively verdant character when viewed from this direction. Accordingly, while less landscaping would be visible on approach into the site and adjacent to the pedestrian link compared to the approved scheme, the overall effect of the reduction would not harm the character of the site.
21. Therefore, while the diagrammatic guidance in the Orchard Design Guide Supplementary Planning Document (SPD) indicates a landscaping area either side of a pedestrian link, the scheme would not conflict with the essential design criteria which includes using planning to minimise the visual impact of cars and service areas. As such, the proposal would not conflict with the aims of the SPD. It would also not conflict with the aims of the National Design Guide 2021 in this respect.
22. Accordingly, the proposed changes to landscaping would not result in an adverse effect on the pleasant character of the site. As I observed during my site visit, the landscaping in front of properties in the surrounding area is limited, and the proposed changes to landscaping would still result in a more green and pleasant character than the surrounding area. Therefore, the proposal would not have an adverse effect on the character of the area compared with the approved scheme.
23. Consequently, varying the condition would not harm the character and appearance of the area. Therefore, the proposal would not conflict with LP Policy HQ/1 and the SPD which together, among other things, seek integrated car parking and high quality landscaping.

Other Matters

24. I note concerns regarding the outlook of future occupiers of the ground floor of the proposal. However, as the flats would benefit from landscaping directly in front of the buildings, the outlook of future occupiers would be adequate.

Planning obligation

25. Clause 7.12 of the legal agreement made under s106 of the Act relating to the approved scheme, sets out that, in relation to any planning permission granted as a result of any application under Section 73 of the Act, the parties shall comply with the terms of the agreement as if the definition of the planning permission were the new planning permission granted. Accordingly, a new s106 agreement, or deed of variation is not necessary.

Conditions

26. I note the Council's suggested conditions. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other condition(s) imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event

that some have in fact been discharged, that is a matter which can be addressed by the parties.

27. I recognise that the previous permission has commenced and could therefore continue to be implemented in accordance with the conditions set out therein. As I have no justification for the Council's suggested conditions which differ from the previous permission, I have no reason to impose them in this decision letter.

Conclusion

28. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting another plans condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

R Sabu

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing nos OP/170/1 Rev. 3, OP/170/2_Rev. 4, OP/170/3_Rev. 4, OP/170/4_Rev. 4, OP/170/5_Rev. 4, OP/170/6_Rev. 4, OP/170/7_Rev. 3, OP/170/9_Rev. 1 and Location Plan.
- 2) No development above base course level shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 3) Prior to occupation of the approved development a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall be implemented in accordance with the approved details.
- 4) The pedestrian link on land within the Applicant's ownership, between Neal Drive and Chieftain Way, as shown on the approved Site Plan OP/170/2 Rev 1 shall be constructed and made available for public use prior to first occupation of the approved development. The pedestrian link within the Applicant's ownership, shall thereafter be retained in accordance with the approved plans and shall remain accessible to the general public at all times unless otherwise agreed in writing with the Local Planning Authority. The pedestrian link within the applicant's ownership shall be maintained to a standard sufficient for public use as proposed.
- 5) No development shall be occupied until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include the surface treatment of the approved access and surface level car park, indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection in the course of development. The details shall also include specification of all proposed trees, hedges and shrub planting, which shall include details of species, density and size of stock.
- 6) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority. If within a period of five years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.
- 7) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatments shall be completed prior to first occupation of the approved development in accordance with the approved details and shall thereafter be retained.

- 8) All ecological measures and/or works shall be carried out in accordance with the details contained in Section 5 of Preliminary Ecological Appraisal (MKA Ecology, February 2019) and agreed in principle with the local planning authority prior to determination. If any amendments are required to the recommendations, the revised approach shall be submitted in writing to the Local Planning Authority and implemented in accordance with the agreed measures.
- 9) Prior to the commencement of the development, a Precautionary Method of Works for reptiles shall be submitted to the local planning authority and approved in writing. The Method of Works shall include details of a destruction search completed under a watching brief by an ecologist, including the protocol which shall be followed if reptiles are found. Thereafter the development shall be carried out in accordance with the approved details.
- 10) Prior to the commencement of development above slab level a scheme of biodiversity enhancement and management including native planting and a location plan and specification of bat and bird boxes shall be supplied to the local planning authority for its written approval. The approved scheme shall be fully implemented within an agreed timescale unless otherwise agreed in writing.
- 11) Prior to the first occupation of the dwellings hereby approved, each dwelling to be occupied shall be made capable of accommodating Wi-Fi and suitable ducting (in accordance with the Data Ducting Infrastructure for New Homes Guidance Note) shall be provided to the public highway that can accommodate fibre optic cabling or other emerging technology, unless otherwise agreed in writing with the Local Planning Authority.
- 12) No construction works shall commence on site until a traffic management plan has been agreed in writing with the Planning Authority. The principle areas of concern that should be addressed are:
 - i. Movements and control of muck away lorries (all loading and unloading shall be undertaken off the adopted public highway)
 - ii. Contractor parking; provide details and quantum of the proposed car parking and methods of preventing on street car parking.
 - iii. Movements and control of all deliveries (all loading and unloading shall be undertaken off the adopted public highway)
 - iv. Control of dust, mud and debris, in relationship to the operation of the adopted public highway.

The development shall be carried out in accordance with the approved details.
- 13) The access shall be a minimum width of 5m, for a minimum distance of 5m measured from the near edge of the highway boundary and not carriageway edge.

- 14) Prior to the first occupation of the development, pedestrian visibility splays measuring 2 metres x 2 metres shall be provided each side of the vehicular access measured from and along the highway boundary within the site area. The splays shall thereafter be maintained free from any obstruction exceeding 0.6m above the level of the adopted public highway.
- 15) The proposed access points shall be constructed so that the falls and levels are such that no private water from the site drains across or onto the adopted public highway (the use of permeable paving does not give the Highway Authority sufficient comfort that in future year's water will not drain onto or across the adopted public highway and physical measures to prevent the same must be provided).
- 16) The proposed access point shall be constructed using a bound material to prevent debris spreading onto the adopted public highway.
- 17) Details for the long term maintenance arrangements of the surface water drainage system (including all SUDS features) shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of any of the dwellings hereby permitted. The submitted details should identify runoff sub catchments, SUDS components, control structures, flow routes and outfalls. In addition, the plan must clarify access that is required to each surface water management component for maintenance purposes. The maintenance plan shall be carried out in full thereafter.
- 18) Development shall not commence until a detailed surface water scheme for the site based on the agreed Surface Water Drainage Strategy prepared by MTC Engineering Ltd. (ref. 2204-DS- Rev B) dated November 2019 has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in full accordance with the approved details before the development is completed.
- 19) No development above ground level shall proceed until an Energy Statement has been submitted to and approved in writing by the local planning authority. The Statement shall demonstrate that a minimum of 10% carbon emissions (to be calculated by reference to a baseline for the anticipated carbon emissions for the property as defined by Building Regulations) can be reduced through the use of on-site renewable energy and low carbon technologies. The approved scheme shall be fully installed and operational prior to the occupation of the development and thereafter maintained in accordance with the approved details.
- 20) No dwelling(s) shall be occupied until a water efficiency specification for each dwelling type, based on the Water Efficiency Calculator Methodology or the Fitting Approach set out in Part G of the Building Regulations 2010 (2015 edition) has been submitted to and approved in writing by the local planning authority. This shall demonstrate that all dwellings are able to achieve a design standard of water use of no more than 110 litres/person/day and the development shall be carried out in accordance with the agreed details.

- 21) No development shall commence until details of a scheme for the provision of 5% car park spaces to have electric vehicle charge points have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be provided in accordance with the approved details prior to the first occupation of the development/first use of the car park and shall be retained thereafter.
- 22) If during the development contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved to the satisfaction of the Local Planning Authority.
- 23) No construction work and/or construction related dispatches from or deliveries to the site shall take place other than between the hours of 08.00 to 18.00 on Monday to Friday, 08.00 to 13.00 hours on Saturdays and no Construction works or collection/deliveries shall take place on Sundays, Bank of Public Holidays unless otherwise agreed in writing by the local planning authority.
- 24) In the event of the foundations for the proposed development requiring piling, prior to the development taking place a report/method statement for approval detailing the type of piling and mitigation measures to be taken to protect local residents from noise and vibration shall be submitted to and approved in writing by the Local Planning Authority. Potential noise and vibration levels, at the nearest noise sensitive locations, shall be predicted in accordance with the provisions of BS 5528 2009 - Code of Practice for Noise and Vibration Control on Construction and Open Sites Parts 1 - Noise and 2 - vibration (or as superseded). Development shall be carried out in accordance with the approved details.
- 25) No development shall commence until a programme of measures to minimise the spread of airborne dust (including the consideration of wheel washing and suppression provisions) from the site during the construction period or relevant phase of development has been submitted to and approved in writing by the Local Planning Authority. Works shall be undertaken in accordance with the approved details / scheme unless the local planning authority approves the variation of any detail in advance in writing.
- 26) No development (including any pre-construction, demolition or enabling works) shall take place until a comprehensive construction programme identifying each phase of the development and confirming construction activities to be undertaken in each phase of the development and confirming construction activities to be undertaken in each phase of the development and a timetable for their execution has been submitted to and approved in writing by the Local Planning Authority in writing. The development shall subsequently be implemented in accordance with the approved programme unless any variation has first been agreed in writing by the Local Planning Authority.

- 27) During construction there shall be no bonfires or burning of waste on site except with the prior permission of the Environmental Health Officer in accordance with best practice and existing waste management legislation.
- 28) No development including demolition or enabling works shall take place until a Site Waste Management Plan for the construction phase has been submitted to and approved in writing by the Local Planning Authority. The approved plan shall be implemented in full.
- 29) The development shall be constructed in strict accordance with the noise mitigation scheme detailed in the Orchard Park, Apartment Development, Cambridge, Site Suitability Assessment (Project No.: 70065122 and dated November 2019, as amended 2020) produced by WSP for protecting the proposed dwellings from noise from the A14 and submitted with the application. All works which form part of the approved scheme shall be completed before any one of the permitted dwelling is occupied.
- 30) Before the development / use hereby permitted is commenced, an assessment of the noise impact of plant and or equipment including any renewable energy provision sources such as any air source heat pump or wind turbine on the proposed and existing residential premises and a scheme for insulation as necessary, in order to minimise the level of noise emanating from the said plant and or equipment shall be submitted to and approved in writing by the local planning authority. Any noise insulation scheme as approved shall be fully implemented before the use hereby permitted is commenced and shall thereafter be maintained in strict accordance with the approved details and shall not be altered without prior approval.
- 31) Prior to commencement of the development an artificial lighting scheme, to include details of any external lighting of the site such as street lighting, floodlighting, security / residential lighting and an assessment of impact on any sensitive residential premises on and off site, shall be submitted to and approved in writing by, the Local Planning Authority. The scheme shall include layout plans / elevations with luminaire locations annotated, full isolux contour map / diagrams showing the predicted illuminance in the horizontal and vertical plane (in lux) at critical locations within the site, on the boundary of the site and at adjacent properties, hours and frequency of use, a schedule of equipment in the lighting design (luminaire type / profiles, mounting height, aiming angles / orientation, angle of glare, operational controls) and shall assess artificial light impact in accordance with the Institute of Lighting Professionals "Guidance Notes for the Reduction of Obtrusive Light GN01:2011". The approved lighting scheme shall be installed, maintained and operated in accordance with the approved details / measures unless the Local Planning Authority gives its written consent to any variation.

End of Schedule