



Appeal Decision

Site visit made on 18 November 2019

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 February 2020

Appeal Ref: APP/E5330/W/19/3228947

**Greenwich Millennium Village Phases 3, 4 & 5, Plot 201 (Parcel 2),
GMV345, Peartree Way, Greenwich**

Easting: 540125 Northing: 179199

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of an outline planning permission.
- The appeal is made by Mr David Kavanagh (Greenwich Millennium Village Ltd) against the decision of Royal Borough of Greenwich Council.
- The application Ref 18/0825/R, dated 28 February 2018, sought approval of details pursuant to condition No 2 of an outline planning permission Ref 14/1633/MA, granted on 23 December 2014.
- The application was refused by notice dated 14 November 2018.
- The development proposed is submission of Reserved Matters (Appearance, Layout, Scale and Landscaping) pursuant to condition 2 of Planning Permission dated: 23/12/2014 (Reference 14/1633/MA) for the construction of 65 residential dwellings, with residents lounge, plus associated infrastructure, landscape and car parking on Plot 201. (re-consultation, revised drawings).
- The details for which approval is sought are: Reserved matters seeking approval of appearance, layout, scale and landscaping, for Plot 201 (Parcel 2 Sub-Phase 2) of Greenwich Millennium Village Phases 3, 4 & 5 development (GMV 345) pursuant to Condition 2 of Outline planning permission reference 14/1633/MA dated: 24/12/2014, involving the erection of 65 residential dwellings, plus associated infrastructure, landscape and car parking.

Decision

1. The appeal is allowed and the reserved matters are approved, namely in respect of the appearance, layout, scale and landscaping submitted in pursuance of condition No. 2 attached to planning permission Ref No: 14/1633/MA dated 23 December 2014 subject to the conditions set out in the attached Schedule.

Background and Main Issue

2. Outline planning permission¹ was originally approved for a mixed use development including up to 1,746 residential units in 2012 for a redevelopment referred to as Greenwich Millennium Village (GMV) phases 3, 4 and 5. An application for a minor material amendment² to the 2012 outline permission was approved in 2014 and it is in relation to condition 2 of that permission to which this appeal relates.

¹ LPA Ref No: 12/0022/O

² LPA Ref No: 14/1633/MA

3. All matters other than access were reserved for all but the first sub-phase³ of the proposals set out in the 2012 and 2014 outline permissions, including the part of the site referred to as plot 201 (the current appeal proposal). The appeal proposal before me seeks approval for the remaining reserved matters in respect of plot 201.
4. There is broad agreement between the main parties in their descriptions of the planning history relating to the appeal site and the wider redevelopment area of which it is part. I do not therefore intend to rehearse this matter here in any great detail but note that the development parameters accompanying the outline permissions in respect of plot 201 indicated a building of up to 20 storeys in height⁴, with its indicated footprint suggesting a southwest-northeast orientation.
5. The proposal now before me, which seeks approval for the remaining reserved matters, proposes a building of up to 13 storeys, albeit with constituent 'wings' comprising elements of 8, 10 and 12 storeys. The building's axis has also been rotated from the outline parameters such that its widest elevations face southwest and northeast, rather than northwest / southeast as originally suggested. During my visit to the appeal site I noted the site's immediate context in terms of the presence of buildings to the east⁵ and southeast⁶ of the appeal site that are part of the GMV development, those to the northeast between the appeal site and the river⁷ and to the open spaces to the north and west⁸.
6. Beyond the footway link immediately to the north of the appeal site lies the Greenwich Ecology Park (GEP), whilst to the west of the site lies Southern Park (SP). Together, these form a Site of Importance for Nature Conservation (SINC) of Borough Importance Grade 1 as defined within the Royal Greenwich Local Plan Core Strategy with Detailed Policies (CS)⁹. The Southern Park element is described as amenity grassland containing extensive plantings of native trees and wildflower meadows around its edges, whilst the Ecology Park contains a range of habitats managed for environmental education with diversity of aquatic and marginal plants. Together, they are noted as recent creations of the GMV development as a recent habitat creation scheme.
7. There is one reason for refusal set out in the Council's notice of decision, from which I consider the main issue to be the effect of the proposed development on the ecological value of the Greenwich Peninsula Ecology Park Site of Importance for Nature Conservation, with particular regard to the height and massing of the proposed building.

Reasons

8. The proposed building would be a maximum of 13 storeys in height, albeit that it would be comprised of four distinct elements, each of varying height. Those elements have been described as 'wings' which, for the purposes of describing the respective heights, seems to me to be reasonably appropriate. Thus, the west 'wing', which looks towards and over SP, would be the tallest at 13

³ Referred to as 'parcel 1' in the original outline permission description

⁴ 71.8m AOD – paragraph 14.7 of Officer's Report to Planning Board

⁵ Plot 103

⁶ Plot 101

⁷ Greenwich Peninsula Yacht Club and an aggregates wharf

⁸ Greenwich Ecology Park and Southern Park

⁹ Table 12 – NC23: Greenwich Ecology Park and Southern Park

storeys, the east wing 12 storeys, the north wing 10 storeys and the south wing 8 storeys.

9. In terms of comparative heights, the proposed building would relate well to the existing buildings on plots 103 and 101. The appellant has, I note, revised the proposal through an iterative design process. Initially proposed as a taller building within the overall scale parameters considered and accepted in principle as part of the approved outline proposals, what is now proposed would be a building of comparatively significantly reduced scale, massing and height.
10. It would, however, still nevertheless be a building of substantial height. Whilst only slightly taller than those buildings at plots 103 and 101 of the GMV development, it would have an intimate relationship with the network of walkways around the perimeter of the site. Significantly, it would only be separated from the adjacent Ecology Park by the width of the walkway along the site's northern boundary.
11. Clearly, a building of this scale will result in shading. The appellant has submitted detailed analysis of sun path and shading¹⁰ (XC02) from the proposed building on plot 201. These show the typical extent of shading at hourly intervals on month-by-month basis.
12. These diagrams demonstrate that the proposed appeal building would have a lesser impact in terms of shading than the broad scale and massing of the outline masterplan building indicated on the parameter plans previously approved. By virtue of the building's re-orientation and reduction in height in comparison with the parameter building, the extent of the shaded area would be noticeably reduced. As a consequence, the sweep of the shaded area across the GEP would appear quicker and the length of time that parts of the GEP would be within shade arising from the proposed building would also be reduced.
13. The XC02 assessment also shows the extent of shading of the proposal cumulatively with the built and consented elements of the GMV development of adjacent plots. What is clear from this suite of diagrams is that the southeast perimeter areas of the GEP, and the eastern corner of the GEP, would be the most affected by the proposal, and the proposal cumulatively with the built and consented extent of the GMV development. These diagrams also show that a small element of the south-eastern area¹¹ would receive more than four hours of daily shading throughout the year, albeit that it would also receive between two and eleven hours of sunlight depending upon the time of year.
14. It is agreed, and is indeed clear to any observer, that it is this area which would be most directly affected by the proposed building. However, it is also clear that, even without the proposed building at plot 201, and setting aside the possible effects of the parameter building considered at the outline stage, the consented and built elements of GMV would, or already do, have an impact on the south-eastern portion of the GEP. Although the Council acknowledge the reduction in massing, and the knock on in terms of shading, when compared with the parameter building, the resulting shading figures of 61% of

¹⁰ 'Daylight, Sunlight & Overshadowing Assessment' March 2018 : XC02 for GMVL and 'Overshadowing Note 8.797' dated 05/03/2019 and submitted as Appendix C of Appellant's Statement of Case

¹¹ Approximately 0.5% of the total area of the GEP

the GEP area in March and 11% in June is considered by the Council to be substantial and that as a consequence the proposal does not do enough to mitigate the effects of the proposed plot 201 building.

15. London Plan (LP) policy 5.3 seeks generally to secure the highest standards of sustainable design and construction and to improve the environmental performance of new developments. With regard to biodiversity, green infrastructure and access to nature, CS policies 5.3(i) and 7.19 seek to ensure that development proposals make positive contributions to the protection, enhancement, creation and management of biodiversity. CS policy DH1 sets out the Council's approach to securing high quality design within developments by, amongst other factors, enhancing biodiversity consistent with the Greenwich Biodiversity Action Plan (GBAP), whilst CS policies OS(f) and OS4 seek to take account of ecological factors and to protect the Borough's rich biodiversity.
16. The GEP provides a range of man-made habitats including large ponds and reed beds, scrub and semi-improved grassland and shingle and wet woodland habitats. These habitats are agreed as being relatively rare within Greenwich, reflected in the SINC designation given to the GEP. A large portion of the GEP is noted¹² as being standing water, with the south-eastern perimeter being one such area, with a mix of scrub and semi-improved grassland also having a significant presence in this particular part of the GEP.
17. Through these diverse habitats, the GEP supports a range of species of birds including the common tern and reed warbler at a level of more than 1% of London's population for both. In addition to birds, the GEP also supports a range of invertebrates, again considered to be of importance on a Metropolitan basis, such as cavity nesting bees and solitary wasp species.
18. The extent to which the habitats, and the species supported by those habitats, would be affected by shading would be largely dependent on the degree to which those areas would be shaded by the proposed development, and cumulatively, and when. The effects would be two-fold; in terms of loss of sunlight by way of overshadowing and by way of local temperature fluctuations arising from periods of shading and the evidence submitted suggests that the effects on habitat and species would vary accordingly.
19. In addition to the embedded mitigation measures set out within the GMV masterplan, the appellant has set out a range of mitigation, compensation and enhancement measures specific to the plot 201 proposals. Noting that the proposed building has been realigned and reduced in scale and massing from that of the parameter building initially envisaged for this plot, the bullet-pointed measures set out on pages 5 and 6 of the Rambol Ecology Summary and Appendix 2¹³ of the appellant's final comments address the areas of greatest impact from shading and local climate changes as a consequence of shading.
20. It is recognised that there would be some impacts, but that mitigation would address those impacts. Given the position of plot 201 (and indeed other built or consented plots) relative to the GEP, such factors should not be unexpected,

¹² Figure 5.1 – Section 5.4, p.18 'Greenwich Millennium Village Block: Ecological Assessment – Overshadowing Impacts' – Rambol Environ March 2018

¹³ Appendix 2: Plot 201 Mitigation / Enhancement / Compensation measures

hence the inclusion of previously embedded mitigation and measures specific to the current proposal. The shading plots demonstrate that hours of longest shading would be during winter months, but even then with extensive shadows cast from not just the proposed appeal building, but those around it, no part of the GEP would be in permanent shade.

21. During this period, invertebrates would be largely inactive, whilst habitats would evolve in those areas of the GEP most affected, such as towards the southeast corner of the GEP closest to plot 201. The impacts of plot 201 should not be taken in isolation, and nor therefore should the mitigation measures. Thus, I am satisfied that those measures set out would mitigate the impacts of the proposal by managing the subtle change of those habitats most closely situated to the proposed building whilst robustly relocating those in areas of greatest shading.
22. The GEP pre-dates the continuing GMV developments and, whilst now well established, the impacts of the on-going developments on the GEP were clearly anticipated with the embedded mitigation measures already set out. It has been clearly demonstrated that the appeal proposal would have a reduced impact in terms of shading than that of the parameter building on this plot. Thus, the consequences of shading arising from the proposed building in terms of temperature variation of areas of water and wetlands, and sun penetration to individual habitat areas would be reduced, and those impacts mitigated and managed. Clearly though, those impacts would be reduced but not eliminated or avoided, but that is the purpose of the proposed mitigation measures which I find to be an appropriate response to the range of impacts noted.
23. For the reasons I have set out above, I am satisfied that it has been adequately demonstrated that the proposal would make appropriate provision for the impact and implications of the proposed building. It is inevitable given the proximity of the GMV site, not just plot 201, to the GEP, that the proposal would have impacts in terms of shading, and the factors that would arise from restricted sunlight. Such matters could not have been unexpected, particularly given the overall scale parameters that accompanied the outline application for planning permission. That the proposal would result in a reduced impact upon the GEP, and makes appropriate provision for mitigation and enhancement, leads me to conclude that the proposal would not cause harm to the ecological or biodiversity interests of the GEP.
24. Royal Greenwich Local Plan: Core Strategy policies DH1(viii), OS4 or OS(f) and London Plan policies 5.3(i) or 7.19 together seek to ensure that proposals take into account ecological factors, including consideration of features of the areas around sites, with appropriate level of surveys to enable informed decisions to be made regarding flora, fauna, habitats, species and trees and the Borough's rich biodiversity will be protected, restored and enhanced. The proposal would not, for the reasons I have set out, be in conflict with these policies or with the environmental objective

Planning obligation

25. The appellant has submitted a signed and dated Unilateral Undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) (the Act). The UU would provide a range of measures and provisions to be put in place before, during and after construction of, and the subsequent occupation of, the proposed residential building. Thus, the

appropriate appointment of ecologists to undertake further surveys in advance of, and reviews, of the mitigation measures, including in relation to solitary wasp species, and with emphasis on those areas at potential for greatest shading are comprehensively addressed within the UU. Whilst the Council have raised concerns and comments regarding the UU, I am satisfied that the UU sets out a robust mechanism to secure appropriate mitigation measures, with those measures based upon updated surveys responding to the evolving circumstances of the GEP as construction of the appeal site proceeds and is subsequently occupied. I am satisfied that the UU satisfies the statutory tests set out in the Community Infrastructure Regulations and paragraph 56 of the Framework, and would ensure that the proposal would not be in conflict with CS policies DH1(viii), OS4 or OS(f) and London Plan policies 5.3(i) or 7.19. I have therefore taken its provisions into account in reaching my decision.

Other Matters

26. The officer's report to the Planning Board considered the reserved matters proposal in considerable detail. Thus, matters relating to residential density, housing mix, affordable housing, accessibility, size and layout, noise, environmental factors affecting living conditions of future occupants of the development, amenity space and landscaping, air quality, archaeology and flood risk were all considered and, in the absence of reasons for refusal in respect of such, were not considered by the Council to be unacceptable or to raise harmful or unacceptable impacts. I have not been presented with any further compelling evidence that would lead me to an alternative conclusion in these respects.

Conditions

27. I have considered the conditions suggested by the Council in light of the Framework and Planning Practice Guidance. I have also noted the appellant's agreement to the conditions originally set out to the Planning Board and replicated in the Council's suggested condition list.
28. In addition to the plans condition relating to the reserved matters, which is necessary in order to provide certainty, I agree that conditions regarding ecological and noise mitigation, tree protection, air management within the building and a scheme for photovoltaic panel installation are necessary in the interests of biodiversity, living conditions and energy efficiency.

Conclusion

29. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR

Schedule of Conditions

- 1) This approval must be read in conjunction with the outline planning permission Ref No: 14/1633/MA and the conditions attached thereto.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Accommodation Schedule RevT02; GMV-ISS-201-00DR-C-301; GMV-ISS-201-00-DR-C-302; GMV-ISS-201-00-DR-C-303; 2839-JW001 P04; 2839-JW-002 P03; 2839-JW-003 P04; 2839-JW-101 P03; 2839-JW-102 P03; 2839-JW-103 P03; 2839-JW-104 P03; 2839-JW-105 P04; 2839-JW-201 P04; 2839-JW-202 P04; 2839-JW-301 P03; 2839-SK-030 P01; TM324L01B; TM324L02D; TM324L04D; TM324L08A.
- 3) The development hereby permitted shall be carried out in strict accordance with the Noise Mitigation Measures as detailed in the Reports entitled: 16381-R06-B Building 201: Internal and façade sound levels and 16381-R07-B Building 201 façade sound insulation mark ups – balconies and windows, produced by Sandy Brown.
- 4) The Ecological Mitigation shall be carried out in strict accordance with the measures identified in: Ecological Assessments – Overshadowing Impacts; Ecological Assessment – Non-Technical Summary; Foul and Surface Water Drainage Strategy; Breeding Bird Survey; Bat Survey Report and the Lighting Strategy (0832-DFL-LS001).
- 5) The development hereby permitted shall be carried out in strict accordance with the Tree Protection Measures as detailed in the Report entitled: Arboricultural Implications Assessment (Tamla Trees) February 2018.
- 6) Prior to first installation, details of how the risks of overheating have been suitably addressed, to include the details of the mechanical ventilation system and the air source heat pumps including the resulting scheme, along with machinery/apparatus location, specification and operational details; management plan for the operation of the technologies submitted to and approved in writing by the local planning authority. The submitted details shall include both detailed plans and a servicing plan including times, location, frequency, method of servicing (and any other details the local planning authority deems necessary) along with a noise assessment regarding the operation of the technology.
- 7) Prior to first occupation of the building hereby approved (Plot 201), the additional PV panels required to reach a minimum of 18.1% reduction in CO2 from renewable sources shall be installed and be operational on plots 204 and 205. Evidence that the scheme of renewal energy provision has been installed and is achieving the required CO2 reductions shall be submitted to and approved in writing by the local planning authority prior to first occupation of the building hereby approved (Plot 201).