



Appeal Decision

Site visit made on 5 January 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2022

Appeal Ref: APP/Q5300/W/21/3275838 **59 Main Avenue, London EN1 1DS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Schwartz of Tagmarsh Limited against the decision of the Council of the London Borough of Enfield.
 - The application Ref 20/03407/FUL, dated 16 October 2020, was refused by notice dated 19 February 2021.
 - The development proposed is demolition of existing garages and other single storey buildings, and the erection of a part 4, part 3 and part 2 storey block consisting of 12 new dwellings with associated parking, landscaping, and cycle storage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant submitted new evidence at the start of the appeal, and this included a viability report, among other things. Interested parties will have had an opportunity to comment on the new evidence under the appeal. I consider that accepting this new evidence will not cause prejudice to proceedings and it has been accepted on this basis.
3. The appellant submitted a Section 106 unilateral undertaking (the S106) containing a number of planning obligations at final comments stage. A completed and correctly executed planning obligation will have legal effect and should be considered accordingly. It has been accepted on this basis and the main parties have been given an opportunity to comment.
4. However, any other new evidence not relating to the Section 106 unilateral undertaking, or submissions that go beyond what can reasonably be considered final comments, have not been accepted. This includes new evidence relating to registered providers submitted by the appellant pursuant to exceptional circumstance. To accept new evidence of this nature at this stage of the appeal would be prejudicial to other interested parties.
5. The Council's appeal statement concedes that its reasons for refusal relating to trees and drainage could be dealt with by suitably worded conditions and that they continue to object to the proposal only on the basis of the reasons for refusal relating to character and appearance, parking, and affordable housing. This has informed the main issues under the appeal.

Main Issues

6. The main issues are:

- (a) whether affordable housing planning obligations are necessary and have been suitably provided;
- (b) the effect of the proposal on parking and highway safety; and
- (c) on the character and appearance of the area.

Reasons

Affordable Housing Planning Obligations

- 7. As a starting point, given the scale of the proposal, the provision of affordable housing is expected in accordance with Policy CP3 of the Enfield Core Strategy 2010 (CS), Policy DMD1 of the Enfield Development Management Document 2014 (DMD), and associated documents. These require onsite affordable housing provision of 40% unless exceptional circumstances exist, or unless there is viability justification for a different figure.
- 8. The appellant principally relies on a viability justification when assessing compliance with the development plan. In this context, there are detailed and highly technical disputes between viability experts and I am cognisant of the National Planning Policy Framework (the Framework) and Paragraph 58 which states that the weight to be given to the viability assessment is a matter for the decision maker, having regard to all of the circumstances in the case.
- 9. In this context, in accordance with the broad facts, the appellant produced an initial assessment¹, which indicated only 2 affordable units could be provided. An independent assessment for the Council² found that full compliance could be achieved, with the principal differences between the two relating to the Benchmark Land Value (BLV) and Residential Sales Values (RSV).
- 10. The appellant provided a further review of viability³, which adopted different levels of profitability and costs and revised RSVs and proposed that there was insufficient viability within the scheme to justify the provision of any contribution to affordable housing. Notwithstanding this, at final comments stage, the appellant submitted the S106, which undertook to provide a contribution for affordable housing.
- 11. The appellant's approach to viability appears to place reliance on the actual sales value of the site to determine the BLV. Such an approach is not supported by the Planning Practice Guidance (PPG)⁴, which is explicit that:

"Where viability assessment is used to inform decision making under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan. "
- 12. The BPS approach has tested the current use value and an alternative use value and utilised the highest of these. While I note there are challenges to this figure, I am content that it reflects the most appropriate approach in this case.

¹ Brasier Freeth

² BPS

³ James R Brown

⁴ PPG ID: 10-014-20190509

13. There were a number of examples used in the assessments to demonstrate sales values. While I note the arguments regarding market suppression, as a result of coronavirus and other effects, market support, including stamp duty changes, I nonetheless find the BPS figures to be a logical assessment of value against comparators in the local market.
14. Consequently, I give significantly more weight to the Council's viability position, where the final conclusions have been more consistent by comparison and are based on established methodology within the PPG. On the evidence before me, I conclude that policy compliant affordable housing provision should be made, and 4 units delivered on site and a balancing payment in lieu.
15. Notwithstanding my preceding assessment, I must consider the S106 provided by the appellant as a fallback position. This would appear to respond to the appellant's first assessment that 2 units would be viable and consequently promotes 15% provision by way of a unilateral undertaking.
16. While such a contribution would represent an improvement over the proposal set out in the appellant's later assessment, it nonetheless falls below the policy expectations and provides only a contribution and not the expected provision of on-site affordable housing for developments in excess of 10 units.
17. On the evidence before me, there are very limited exceptional circumstances set out so as to support deviation from these policy requirements. Accordingly, there would be conflict with Policy CP3 of the CS and DMD1 of the DMD.

Parking and Highway Safety

18. The site lies in an area with an agreed PTAL level of two, which suggests there is limited access to public transport. Nonetheless, I accept that there is access to shops and services nearby.
19. There are several residential streets directly to the south of the site, including Landseer Road. During my site visit, which I accept represents only a snapshot in time, there was a significant number of vehicles parked along these streets.
20. The analysis provided by the appellant also demonstrates that parking stress in the area is high. The Council identified that on those figures the streets are at around 91% capacity.
21. While there may be some additional on-street parking availability during the night, through the use of single yellow line areas, this would have no benefit during the day and requires car owners to respond to traffic restrictions. Overall, it is not unreasonable to conclude that the availability of on-street parking is significantly limited in this area.
22. Among other things, Policy DMD 45 of the DMD is predicated on parking standards within the London Plan, the most recent version of which was adopted in 2021 (LP). Policy T6 therein establishes that car free development should be the starting point for development well connected to public transport.
23. The proposal is not well connected in PTAL terms, and the policy therefore expects that development outside of these areas should provide the minimum necessary parking. It further identifies, in Table 10.3 under Policy T6.1, the maximum provision for a scheme of 12 units, including 4 family units, as being 10 spaces; this is supported in the appellant's statement.

24. The proposal would deliver six off-street parking spaces, which is below the anticipated car ownership level for the twelve units of eight off-street parking spaces, as set out in the appellant's transport assessment. This number has not been challenged by the Council and it is clear this would represent the minimum necessary parking required under Policy T6 of the LP.
25. Consequently, there would be a shortfall of two off-street parking spaces, and this would give rise to additional parking stress on nearby residential streets where parking is already limited.
26. Planning obligations unilaterally entered into by the appellant seek to secure a car club contribution and scheme, and these are necessary in attempting to mitigate the shortfall in off-street parking and is an approach supported in the development plan.
27. However, whilst this mitigation may be effective in the short term, it would, in my view, be ineffective in the long term once the membership commitment ceased after the initial three year period. Consequently, it is not mitigation that would endure and can only carry limited weight as such.
28. I have noted that the site is located along Main Avenue, which comprises a mix of uses including a primary school and shopping parade, among other things. It would appear that residents living in the immediate vicinity are well located to shops and services, which they could access on a daily basis without relying on a private vehicle.
29. Nonetheless, such facilities should be reflected in typical car ownership levels used to predict the required eight spaces. As a consequence, this development would fail to provide the necessary provision.
30. The increased competition for scarce spaces would be likely to result in unnecessary travel, with drivers cruising nearby residential streets looking for available spaces and with attention diverted towards finding somewhere to park rather than on road conditions.
31. It may further lead to increased instances of dangerous and obstructive parking, such as on yellow lines, at road junctions, on footways or across driveways, to the detriment of the free and safe flow of traffic.
32. I note the argument that two additional cars would be negligible. However, such arguments could be repeated across new development leading to an increasingly unacceptable impact on the road network.
33. The Framework acknowledges that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
34. However, on the evidence before me, the appellant has failed to sufficiently demonstrate that this under provision would not contribute to cumulative highway safety risks or additional delays and congestion on the local road network.
35. Altogether, it is clear that the proposal would not provide the minimum necessary parking. Consequently, the proposal would be in direct conflict with Policy DMD 45 of the DMD and Policy T6 of the LP.

Character and Appearance

36. The site is located on the corner of Main Avenue and Landseer Road. The former is a mixed use street comprising a primary school, shopping parade, two-storey terraced dwellings, apartment blocks and other public buildings such as places of worship. The latter is a residential street comprising two-storey terraced dwellings. Consequently, the pattern of development, scale, and design of buildings within the immediate vicinity of the site is highly variable.
37. The existing site comprises an open yard area with single-storey buildings and is somewhat of a low rise transition between the two-storey terraced dwellings along Landseer Road and the mix of buildings along Main Avenue. However, in keeping with the highly variable nature of buildings within the immediate vicinity of the site, the transition from residential streets onto Main Avenue is also highly variable.
38. For example, the corners of Main Avenue and Third Avenue, and St Mark's Road and Main Avenue, both comprise places of worship, which are buildings of appreciable scale and are not indicative of the residential streets behind. Furthermore, the corner of Roman Way and Main Avenue comprise a mix of buildings of different scales that are also not indicative of the residential streets behind.
39. The primary school, and apartment building along Main Avenue also present in a similar context and are not indicative of the residential streets behind. Altogether, there is sufficient variability to determine that the proposal, despite being in a transitional location, should not be unduly restricted in its design and does not need to be wholly indicative of the residential dwellings on Landseer Road. I note the Council highlight their particular concerns as relating to the relationship between the terracing here and the proposed development.
40. In this context, the proposal would deliver a part 4, part 3 and part 2 storey block consisting of 12 new dwellings. It is clear from the plans that the proposal has been designed so that the largest components of the building are orientated towards Main Avenue, and the smallest components of the building are orientated towards Landseer Road.
41. This is a sympathetic approach to what is a transitional site, and whilst the scale of the proposal is substantial compared to what is existing, viewed in conjunction with the variability in the character and appearance of buildings in the locality, particularly on corner plots, I consider it would not be an overly prominent addition to the street scene.
42. Indeed, the proposal would appear congruent in the context of other prominent buildings along Main Avenue and many of the transitions from adjoining residential streets.
43. Although the Council questions the appropriateness of the projecting windows at roof level, it is not clear why they are harmful in and of themselves. Whatever the case may be, the variability apparent along Main Avenue does not exhibit a uniform design approach in the use of windows.
44. Furthermore, the suitability of materials could be secured by an appropriately worded condition to ensure the proposal assimilates the materials palette of the local area.

45. Overall, I am satisfied that the design appropriately respects the transition to the traditional terraces and would not harm the character and appearance of the area. It would comply with Policy CP30 of the CS and Policies DMD 6, DMD 8 and DMD 37 of the DMD, which, among other things, require proposals to be of an appropriate scale, bulk and massing.
46. The Council did not take the opportunity to provide updated references for the London Plan 2021 insofar as it relates to character and appearance, and consequently there is no evidence of counterpart provisions carried over from the preceding plan, as identified within the Council's decision notice, that should be considered in my decision.

Other Matters

47. In relation to pre-application advice given by the Council, PPG⁵ is clear that such advice is not binding and does not pre-empt the democratic decision making process or a particular outcome.
48. A planning obligation relating to residual profits is proposed. This would represent a neutral matter in relation to this case, as any further contributions associated with this scheme would still not reflect full policy compliance. Consequently, it is not necessary for me to reach a finding on it.
49. A planning obligation relating to carbon offsetting is mitigation and it would weigh as a neutral matter in the planning balance. Consequently, as it is not related to any of the main issues or determinative in this case, it is not necessary for me to make a finding on it.
50. A planning obligation relating to monitoring costs is not related to the planning merits of the case and would weigh as a neutral matter in the planning balance. Consequently, it is not necessary for me to reach a finding on it.

Conclusion

51. For the reasons given above, even though I have found the proposal would be acceptable in relation to character and appearance, this would not outweigh the conflict with the development plan in relation to affordable housing, parking and highway safety. Consequently, the proposal would conflict with the development plan as a whole and the appeal is therefore dismissed.

Liam Page

INSPECTOR

⁵ PPG ID: 20-011-20140306