



Appeal Decision

Site visit made on 21 May 2024

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 19th June 2024

Appeal Ref: APP/M1595/W/24/3338569

Land adjacent to Tamarisk Road, South Ockendon, Essex

- 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 Jadebright Ltd against the decision of Thurrock Borough Council.
 - The application Ref 21/02190/FUL, dated 24 December 2021, was refused by notice dated 21 August 2023.
 - The development proposed is the erection of five new buildings comprising 38 residential apartments (Use Class C3) with car parking, cycle parking, new primary and secondary vehicular accesses, soft and hard landscaping including amenity space and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of five new buildings comprising 38 residential apartments (Use Class C3) with car parking, cycle parking, new primary and secondary vehicular accesses, soft and hard landscaping including amenity space and associated works at Land adjacent to Tamarisk Road, South Ockendon in accordance with the terms of the application, Ref 21/02190/FUL, dated 24 December 2021, subject to the conditions set out in Schedule 1 of this decision.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The planning application was refused by the Council for reasons relating to; i) the effects on the character of the area, ii) car parking, iii) an unjustified absence of affordable housing. Since the application was refused, the Council has resolved that it would not defend any of its reasons for refusal as the proposal is acceptable in all its aspects. A signed Statement of Common Ground (SoCG) has been submitted by the appellant and Council which confirms the Council's position that the proposal is compliant with the development plan. The SoCG also confirms that there is agreement in relation to a schedule of conditions.
4. A planning obligation has been submitted in the form of a Unilateral Undertaking by the appellant. This includes obligations relating contributions for a car club and related matters, education and healthcare. The Council has confirmed that the form and content of the Undertaking are acceptable.

Main Issues

5. It has now been confirmed that the Council considers that the proposal complies with all the relevant policies within the Thurrock Core Strategy and Policies for Management of Development (2015) (CS) and the saved policies of the Borough Local Plan (1997).
6. Notwithstanding the Council's position interested local residents and groups have expressed their views and raise concerns in relation to the scheme. These broadly relate to matters similar to the Council's reasons for refusal as well as a lack of schools and healthcare in the area. These will be addressed in my reasoning, below.

Reasons

The effects on the character of the area

7. The appeal relates to this long site which runs between Tamarisk Road and the railway line. South Ockendon rail station is a short distance from the site. The proposal seeks to construct 5 buildings with a mix of dwellings and flats that would be 3 and 4 storeys in height.
8. The residential area to the east of Tamarisk Road is referred to as the Flowers Estate. Here the houses are generally 2 storeys with relatively generous spacing and some are set back from Tamarisk Road behind wide verges and parking areas. The Flowers Estate was originally built in the 1960s and replaced post-war pre-fabricated houses. The existing houses are also of pre-fabricated construction and mainly comprise of blocks of 8 terraced dwellings laid out parallel to Tamarisk Road and to each other.
9. To the west of Tamarisk Road sits the appeal site and beyond the railway line is the development at Arisdale Avenue which comprises residential buildings of 3 to 5 storeys and the large Next Distribution Centre to the immediate west. Both the Arisdale Avenue development and the Next Distribution Centre are taller than the appeal proposals.
10. The proposed development consists of 5 separate blocks arranged in a mews-style layout. The blocks facing onto Tamarisk Road would be 3 storeys in height. The block at the rear of the site, adjacent to the railway line would be part 4 storeys and part 2 storeys and the block in the south of the site would be 3 storeys in height. For the rear, western block the 4 storey sections would be punctuated by the 2 storey sections which would provide visual interest and would break up the appearance of this building.
11. I consider that the overall layout and design would be appropriate to the area. The proposed use of brickwork and other detailing would provide interest and articulation to the elevations. The designs include active building frontages to Tamarisk Road which would be a welcome feature of the development. In my view the form and appearance of The Flowers Estate does not need to be followed at the appeal site. Its context is wider and contains other built forms to respond to. I consider that the proposal would provide a development which would be an appropriate response to its context, would be visually interesting and would have no negative effects on the character of the area. I consider that it would represent an improvement to the vacant and neglected nature of the existing site. Therefore, I find that the proposal complies with the requirements of Policies CSTP22, CSTP23 and PMD2 of the CS.

Parking and traffic

12. The proposal contains the provision for 32 car parking spaces. In addition, the submitted Planning Obligation includes a commitment for provisions for a car club. Whilst the Council acknowledges that the car parking provision falls slightly short of their normal requirement, their view is that this is more than made up for by the car club requirement which, in their estimation, for each vehicle in a car club would replace 20 private cars.
13. The appeal site is very close to South Ockendon Railway Station and bus services run nearby. The Council considers that the site is within a highly sustainable location and summarises its accessibility as 'medium'. The appellant states that they consider the area to have a high level of accessibility.
14. Whilst I understand the sensitivity of existing residents around Tamarisk Road to car parking, I am satisfied that the proposed amount would be acceptable for a development of this nature. Its location would provide ready alternatives to using the private car through use of rail and bus services. Whilst I note some criticism of these services by a local resident, they still provide access to the wider public transport network. Furthermore 38 cycle spaces are also included within the proposal.
15. In relation to access and congestion, I note that the Highways Authority has raised no objection in relation to the effects of the traffic generated by the proposed development on the capacity of the surrounding highway network. Additionally, I would not expect that the overall modest increase in vehicle movements would have an unacceptable effect in relation to pollution. Suitable measures can be required to ensure that the access to the site provides sufficient visibility for vehicles. Taking these matters together, I consider that the proposal raises no conflict with Policies PMD8 and PMD9 of the CS.

Affordable Housing

16. The proposal contains no provision for affordable housing. The appellant's and Council's independent specialist advice agrees that the proposal could not financially support any on-site provision or payment in lieu of affordable housing. I have been presented with no evidence which challenges the appellant's and Council's submissions.
17. Policy CSTP2 recognises that the redevelopment of previously developed sites can be the subject of constraints and that it accepts that viability can limit affordable housing provision. That is the case in this instance and I conclude that there is no conflict with Policy CSTP2 for that reason.

Effects on Schools, Healthcare and other services

18. Some residents raise concerns that the additional pressure on surrounding services arising from residents at the appeal site would be unacceptable. In relation to education and healthcare, the submitted Planning Obligation would provide financial contributions which the Council have deemed sufficient to mitigate the effects of the proposal on these services locally. I have been provided with no evidence which seeks to suggest that differing financial amounts would be necessary or justified. In relation to the provision of a supermarket, as suggested by one resident, I have no evidence before me which would justify the need for such a provision arising from the proposed development.

Other matters

19. The proposed blocks would be sited a minimum of 25m from the existing houses on the opposite side of Tamarisk Road. Although concern is raised by 1 resident, I consider that this would be sufficient to ensure that no unacceptable levels of overlooking would be experienced, either by the existing or future residents. In relation to vibration from the nearby railway transmitting to the proposed buildings, the Council states that such a relationship is common-place and covered by other legislation. I have no reason to take a different stance.
20. It is agreed that the Council cannot demonstrate a suitable supply of housing sites, compatible with the requirements of the National Planning Policy Framework. I have found that the proposal complies with the Council's Development Plan in all respects and so it is not necessary to examine the housing supply situation or its implications as this could only add weight in favour of the appeal. I have also taken account of the agreed benefits of the proposal, as set out in the SoCG.
21. The submitted Unilateral Undertaking includes contributions and provisions which I refer to above. In my view and taking account of the submitted evidence, these matters are justified and relate in scale and nature to the proposed development and are required to make it satisfactory. Therefore, I shall have regard to these matters in determining the appeal.

Conditions

22. The appellant and the Council have submitted an agreed schedule of conditions which I shall assess. I shall take account of the advice in the NPPF and PPG in relation to the use of planning conditions. For the sake of clarity and certainty, I shall include a condition which confirms the approved drawings. So that the proposal has an acceptable appearance and visual effect on the area I shall include conditions relating to materials, landscaping, fences and other boundary treatment and exterior lighting.
23. A condition requiring adherence to a Construction Environmental Management Plan is necessary and justified so that construction takes place without undue disruption the surrounding area and residents. To ensure that the development is undertaken in an environmentally acceptable manner and to comply with Policy PMD13 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015], a condition requiring adherence to the submitted Sustainable Design and Construction statement is necessary. Conditions which seek to identify any contamination of the site and its remediation, if necessary, are also justified.
24. In order to seek to prevent surface water flooding a surface water drainage scheme should be agreed and implemented and I shall attach a condition in this respect. So that the development provides the agreed parking, cycle parking, refuse and recycling bins/stores and communal amenity space in a timely manner, I shall attach conditions which require their provision in the approved form prior to occupation of the development. Details of means of controlling access to the parking areas and prevention of parking outside those areas are also necessary and I shall attach a condition requiring their submission, approval and provision. For the sake of highway safety I shall include a condition which requires the agreement and implementation of suitable visibility splays at the approved access.

25. In view of the proximity of the railway line and resultant noise, a condition requiring acoustic attenuation is necessary. In order to suitably address ecological biodiversity measures, in accordance with Policy PMD7 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015], I shall include a condition requiring the implementation of a suitable agreed scheme. To ensure that the development meets Secure by Design principles as required by policy PMD2 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development [2015], I shall include a condition which requires the developer to submit suitable details in this respect.

Conclusion

26. Taking account of all of the submissions made in relation to this appeal, I conclude that the proposal is in accordance with the development plan as a whole. Subject to the Planning Obligations and conditions, the proposal would have an acceptable effect on the area, bringing a number of undisputed benefits with it. As a consequence, the appeal is allowed.

T Wood

INSPECTOR

SCHEDULE 1. CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Plan Numbers: SSSOX-BPA-ZZ-XX-DR-AP0000; SSSOX-BPA-ZZ-XX-DR-AP0010 Rev A; SSSOX-BPA-ZZ-XX-DR-AP0300; SSSOX-BPA-ZZ-XX-DR-AP1101 Rev B; SSSOX-BPA-ZZ-XX-DR-AP1110 Rev B; SSSOX-BPA-ZZ-XX-DR-AP1111; SSSOX-BPA-ZZ-XX-DR-AP1112; SSSOX-BPA-ZZ-XX-DR-AP1200 Rev A; SSSOX-BPA-ZZ-XX-DR-AP1300; SSSOX-BPA-ZZ-XX-DR-AP1501; SSSOX-BPA-ZZ-XX-DR-AP1500; SSSOX-BPA-ZZ-XX-DR-AP2300; SSSOX-BPA-ET-XX-DR-AP3100; SSSOX-BPA-ET-XX-DR-A-P3101; SSSOX-BPA-ET-XX-DR-AP3102; SSSOX-BPA-WT-XX-DR-AP3110; SSSOX-BPA-WT-XX-DR-AP3111 Rev A; SSSOX-BPA-ET-XX-DR-AP3112; SSSOX-BPA-ST-XX-DR-AP3120; SSSOX-BPA-ST-XX-DR-AP3121 Rev A; SSSOX-BPA-ET-XX-DR-AP3122.
- 3) Notwithstanding the information on the approved plans, no development shall commence above ground level until written details of all 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. The development shall be carried out using the materials and details as approved.
- 4) No demolition or construction works shall commence until a Construction Environmental Management Plan [CEMP] has been submitted to and approved in writing by the local planning authority. The CEMP should contain or address the following matters:
 - (a) Hours of use for the construction of the development,
 - (b) Hours and duration of any piling operations,
 - (c) Vehicle routing in connection with construction, remediation and engineering operations,
 - (d) Wheel washing and sheeting of vehicles transporting loose aggregates or similar materials on or off site,
 - (e) Details of construction access or temporary access, and details of temporary parking requirements,
 - (f) Location and size of on-site compounds [including the design layout of any proposed temporary artificial lighting systems],
 - (g) Details of any temporary hardstandings,
 - (h) Details of temporary hoarding,
 - (i) Details of the method for the control of noise with reference to BS5228 together with a monitoring regime,
 - (j) Measures to reduce vibration and mitigate the impacts on sensitive receptors together with a monitoring regime,
 - (k) Measures to reduce dust with air quality mitigation and monitoring,
 - (l) Details of security lighting layout and design,
 - (m) Contact details for site managers including information about community liaison including a method for handling and monitoring complaints and,

(n) Precautionary measures for site clearance in accordance with Ecological Impact Assessment, ref: bpthur/2005007, ACD Environmental, 22 December 2021.

Works on site shall only take place in accordance with the approved CEMP.

- 5) No works, including groundworks, shall take place until Phase II investigation and risk assessment, in addition to the assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority.
- 6)
 - a) If required by condition 5 above, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
 - b) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification or validation report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the local planning authority.
- 7) No development shall commence, other than demolition works, until a detailed surface water drainage scheme for the site, based on the submitted sustainable drainage strategy, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
 1. Full details of all components of the proposed surface water drainage system including dimensions, locations, gradients, invert levels, cover levels and relevant construction details.
 2. Supporting calculations confirming compliance with the Non-statutory Standards for Sustainable Drainage, and the agreed discharge rate of 3l/s and the attenuation volumes to be provided.
 3. Details of the maintenance arrangements relating to the proposed surface water drainage system, confirming who will be responsible for its maintenance and the maintenance regime to be implemented.
 4. The surface water drainage system shall be implemented and maintained in accordance with the approved details thereafter.
 5. Infiltration tests to be carried out for the locations where SUDS are proposed. The scheme shall be implemented as approved and maintained in perpetuity.

- 8) Prior to development above ground level of the development hereby permitted, details of the proposed visibility splays for the vehicular access shall be submitted to and approved in writing by the local planning authority. The measures shall be implemented prior to first occupation of the development and shall be permanently retained as approved thereafter.
- 9) The development hereby permitted shall not be first occupied until such time as the vehicle parking areas shown on the approved plans, have been hard surfaced, sealed and marked out as shown on the plan on page 13 of the Transport Statement Addendum, Motion, 20 January 2023. The vehicle parking areas shall be retained in this form at all times thereafter and maintained for their designated purpose.
- 10) The refuse and recycling storage facilities as shown on the approved plans shall be constructed and completed prior to the first occupation of the development and retained for such purposes at all times thereafter.
- 11) The cycle parking facilities as shown on the approved plans shall be provided prior to the first occupation of any of the residential units and retained for such purposes thereafter.
- 12) Development on site shall only take place in accordance with the Acoustic Assessment Report, ref:11453.RP01.AAR.0, RBA Acoustics, 15 December 2021 and in particular the following element of that document: - A configuration of 10/12/4 double glazing for rooms overlooking the railway line including the north and south facades of the development adjacent to the railway. The noise insulation measures and specification shall be implemented within the residential units prior to first occupation of the development and shall be permanently retained as approved thereafter.
- 13) Development on site shall only take place in accordance with the Sustainable Design and Construction Statement, ref: C210090/A1/0003 YP/II/G81 Rev: 1, Calford Seadon, December 2021. The sustainability measures and specifications shall be implemented within the residential units prior to first occupation of the development and shall be permanently retained as approved thereafter.
- 14) No development shall take place above ground level until full details of both hard and soft landscape works to be carried out have been submitted to and approved in writing by the local planning authority. These details shall include the layout of the hard landscaped areas with the materials and finishes to be used and details of the soft landscape works including schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers/densities and details of the planting scheme's implementation, aftercare and maintenance programme. The hard landscape works shall be carried out as approved prior to first occupation of the development hereby approved unless otherwise first agreed in writing by the local planning authority. The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development, unless otherwise first agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously

damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.

- 15) The ecological mitigation measures within the Ecological Impact Assessment, ref: bpthur/2005007, ACD Environmental, 22 December 2021 shall be implemented in accordance with the details provided. The measures shall be implemented prior to first occupation of the development and shall be permanently retained as approved thereafter.
- 16) Prior to the first occupation of the development hereby approved, details of the design, materials and colour of the fences and other boundary treatments shall be submitted to and approved in writing by the local planning authority. The fences and other boundary treatments as approved shall be completed prior to the first use or operation of the development and shall be retained and maintained as such thereafter.
- 17) Prior to the first occupation of the development hereby approved, details of the siting, design, materials and illumination of the proposed lighting for the development shall be submitted to and approved in writing by the local planning authority. The lighting as approved shall be completed prior to the first use or operation of the development and shall be retained and maintained as such thereafter.
- 18) Prior to the first occupation of the development hereby approved, information shall be submitted to and approved in writing by the local planning authority detailing how the development would adhere to the principles of Secured by Design. The development shall be carried out and retained in accordance with the agreed details.
- 19) Prior to first occupation of the development hereby permitted the communal amenity space shall be laid out and surfaced in accordance with the details as agreed under condition 14 (soft and hard landscaping). The communal amenity space shall be retained for such purposes at all times thereafter.
- 20) Prior to the first occupation of any of the development hereby approved, a plan detailing for the control of access to all car parking areas shall be submitted to and agreed in writing with the local planning authority. The scheme shall be designed to provide controlled access by occupiers of the dwellings, which those parking areas serve. The plan would also need to demonstrate how parking outside designated parking areas would be restricted. The agreed plan shall be implemented in accordance with the agreed details prior to the first occupation of the development and shall thereafter be permanently retained and maintained in the agreed form.



Costs Decision

Site visit made on 21 May 2024

by **Tim Wood BA(Hons) BTP MRTPI**

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

Decision date: 19th June 2024

Costs application in relation to Appeal Ref: APP/M1595/W/24/3338569 Land adjoining Tamarisk Road, South Ockendon, Essex

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Jadebright Ltd for a full award of costs against Thurrock Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for the erection of five new buildings comprising 38 residential apartments (Use Class C3) with car parking, cycle parking, new primary and secondary vehicular accesses, soft and hard landscaping including amenity space and associated works.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own expenses in appeals and that costs may only be awarded against a party who has acted unreasonably and thereby caused the party who is applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The planning application was originally reported to the relevant Committee of the Council in July 2023. The officers' recommendation was that the application should be granted planning permission, subject to a number of conditions. In relation to the matters ultimately raised in the reasons for refusal, the report states that the design and appearance of the proposal would fit in and be of benefit to the area, that there would be no adverse effect on highway safety and that expert evidence demonstrates that the scheme could not viably support any affordable housing (or contribution in lieu thereof).
4. Although the Committee resolved to refuse the application, the decision was deferred pending a further report from officers in relation to the matters of concern raised by the Committee. This was then reported to the August Committee with a similarly supportive report. The minutes of the meeting state that the Principal Officer advised the committee that the suggested reasons for refusal would be difficult to support at appeal. Notwithstanding, the application was refused.
5. Once the appeal had been made by the appellant, the Council undertook a review of its case and it resolved that it would not defend any of the reasons for refusal. An agreed Statement of Common Ground (SoCG) was submitted

which confirmed that the Council considered the scheme to be wholly acceptable and in full accord with the development plan.

6. It is clear to me, and the Council agrees, that any proper analysis of the proposal would have resulted in planning permission being granted. The Council has withdrawn its reasons for refusal, a matter specifically identified in the PPG as representing unreasonable behaviour. Similarly, it has sought to prevent and has delayed development which should have been allowed and has not supported its reasons with any evidence.
7. The appellant should not have had to endure the expense and time involved in making the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Thurrock Borough Council shall pay to Jadebright Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Thurrock Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

T Wood

INSPECTOR