



Appeal Decision

Hearing Held on 25 July 2017

Site visit made on 25 July 2017

by AJ Steen BA (Hons) DipTP MRTPI

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

Decision date: 26 September 2017

Appeal Ref: APP/N1540/W/17/3172421 1-7 Burnt Mill, Harlow CM20 2HT

- 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 Hollybrook (Harlow) Limited against the decision of Harlow District Council.
 - The application Ref HW/FUL/16/00400, dated 7 September 2016, was refused by notice dated 16 December 2016.
 - The development proposed is the demolition of existing motor dealership buildings and replacement with a development comprising 142 residential units, 1,155 sq.m. of office floorspace (within class B1) and 161 car parking spaces.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing motor dealership buildings and replacement with a development comprising 142 residential units, 1,155 sq.m. of office floorspace (within class B1) and 161 car parking spaces at 1-7 Burnt Mill, Harlow CM20 2HT in accordance with the terms of the application, Ref HW/FUL/16/00400, dated 7 September 2016, subject to the conditions in the schedule at the end of the decision.

Application for costs

2. Prior to the Hearing an application for costs was made by Hollybrook (Harlow) Limited against Harlow District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. An executed legal agreement under Section 106 of the Town and Country Planning Act 1990 (S106) was submitted shortly prior to the hearing. At the hearing it was agreed that a revised version would be submitted shortly thereafter with a corrected plan. That was submitted as agreed and I have taken that final version into account in coming to my decision.

Main Issues

4. The main issues are:
 - Whether the proposed development would affect the provision of employment space;

- Whether or not the proposed development would make adequate provision for affordable housing; and
- The effect of the development on pedestrian and highway safety, in particular relating to the location in respect to services and facilities and the provision of parking.

Reasons

Employment space

5. The Burnt Mill employment area, of which the appeal premises forms part, is designated under policy ER5 of the Replacement Harlow Local Plan (LP), where permission will normally be granted for employment purposes. Those purposes are defined in the policy as those falling within use classes B1, B2 and B8, including offices, industry and warehousing. Policy ER6 of the LP seeks to retain those uses within the defined employment areas.
6. The appeal site is currently largely vacant, with a car wash business operating from part of a building and the forecourt area. The previous use of the site was for car sales with ancillary servicing and repairs. Car sales is a sui generis use that does not fall within the definition of employment uses as set out in policy ER5 of the LP. Whilst vehicle servicing and repairs would normally fall within use class B2, they would be ancillary to the primary use in this case.
7. The proposal would provide 1,155sq.m of offices in part of the ground and first floors of the proposed building, along with 142 residential units above and adjacent to the offices, with supporting infrastructure in the remainder of the building. Parking for the office use would be located toward the front of the site, that for the residential units mainly to the rear of the building.
8. The Council suggest that the large residential element would dominate the site and result in it no longer being available for employment uses and it has not been demonstrated that there is a lack of market demand for employment uses as required by policy ER6 of the LP. However, I note that there is an extant planning permission for redevelopment of the site to provide a replacement car showroom with servicing and repair facilities, along with 102 residential units above, which could be completed should I dismiss the appeal. Whilst the proposal contains more residential units, including on the ground floor, the office use would generate more employment than the car showroom. So whilst the amount of space dedicated to the servicing and repair use was slightly larger at 1,165sq.m, it would be dependent on the primary sales use that would not fall to be considered as an employment use.
9. Consequently, the proposed development would result in more of the site being in employment use as defined by policy ER5 of the LP than the existing buildings on the site, and would increase the amount of employment on the site. I conclude that the development would not result in the loss of an employment site or land and, for that reason, would not be contrary to policy ER6 of the LP.

Affordable housing

10. Policy H5 of the LP requires provision of affordable housing on sites of 15 or more dwellings or 0.5 hectare or more. The quantity of affordable housing is not specified within the policy, leaving that to negotiations as to the economics

of provision and site suitability. However, background to the policy suggests that the Council use 30% as a base line for negotiation, increased to 33% in the Affordable Housing Supplementary Planning Document.

11. In this case, I understand that the Council and appellant appointed specialists in affordable housing negotiations to represent them. Their expert advice concluded that provision of 8.5% affordable housing was the appropriate, viable, level for the provision of affordable housing on this site. Although I accept that the Council do not have to take the advice of their professional advisors, I have not been presented with any evidence to demonstrate that the proposed development would be viable with a higher level of affordable housing.
12. The extant planning permission includes affordable housing provision at the level of 33%. However, it was suggested at the hearing that scheme would not proceed in the short term due to the lack of viability. The low level nature and condition of the buildings on the site that are currently surrounded by hoarding could not be described as "ominous" as was the YWCA Hostel site subject of another appeal decision¹. The Council suggest that a car sales use may re-start on the site, although there is no evidence to suggest this would be likely. I consider that retaining this site as vacant for a number of years whilst waiting for it to be redeveloped would not be desirable. Further, I note that the fall-back scheme could be subject of an application under Section 106A of the Town and Country Planning Act to reduce the level of affordable housing provided by that scheme, albeit the regulations would not enable this form of application until January 2019 at the earliest. Consequently, whilst the fall-back position can carry significant weight in the decision making process, its ability to provide affordable housing, even in the longer term, is unclear.
13. There is a substantial need for the provision of affordable housing within Harlow and I note a lack of supply of new affordable dwellings in recent years. That adds weight to the benefits of provision of some affordable housing in the short term through the proposed development.
14. For these reasons, I conclude that the proposed development would make provision for affordable housing at a level that reflects the economics of provision and site suitability. As such, the proposed development would comply with policy H5 of the LP.

Pedestrian and highway safety

15. 1-7 Burnt Mill is located on the edge of Harlow with access from Burnt Mill and on the junction with Elizabeth Way, which is used for access to the neighbouring industrial estate, including by large vehicles. The railway line runs to the rear of the site and it is located within easy walking distance of the station. However, the site is located some distance from other services and facilities, the Council suggest 1.2 miles from Burnt Mill Academy and 0.8 miles from the town centre and Little Parndon Primary School. The Town Park comprises a substantial area of public open space with play facilities located on the opposite side of the roundabout outside the site, albeit the closest entrance would be a slightly longer walk.

¹ Appeal reference APP/N1540/W/16/3146636

16. Walking to services and facilities would require crossing one or more of the busy roads around the site. There is no formal crossing point over Elizabeth Way directly outside the site that would be the quickest route to the closest primary school and town centre. There are traffic light controlled crossings over Fifth Avenue and Edinburgh Way, although not the less busy Station Approach, on the route to Town Park and Burnt Mill Academy.
17. Accident records suggest that this is a safe environment, although that is in the current context without residential properties to the north of Elizabeth Way. My site visit was carried out during the school holidays when traffic would be less than during the term time. However, taking all of the above into account I see no reason to consider that there would not be safe pedestrian access to the services and facilities that would serve residents and office workers at the site.
18. I note that the fall-back position is likely to result in residential development on the site in due course and would include a pedestrian crossing facility across Elizabeth Way. Whilst that is a smaller scheme, and unlikely to be completed for several years, residents of that development would have similar effect on the safety of the surrounding highways, particularly for pedestrians. I consider that the pedestrian crossing in that scheme would not be necessary to make the current proposal acceptable.
19. The proposed Site Plan shows that the 142 residential units would be provided with 142 parking spaces, with the offices being provided with a further 19 spaces. Policy T9 of the LP requires vehicle parking to meet adopted vehicle parking standards, which it confirms are expressed as a maximum. The current standards are contained within the Parking Standards document published by Essex County Council. That document expresses the standards as a minimum, but the LP is the adopted statutory document so it carries more weight where these documents contradict one another.
20. The Council suggest that the number of vehicle parking spaces proposed would be only 44% of the requirements in the standards, a significantly lower proportion than the approved scheme. The Council are concerned that this may result in occupiers of the building and their visitors placing pressure on the limited surrounding on street parking and leading to obstructions on the highway that could restrict the free flow of traffic. Nevertheless, and taking account of the accessibility of the site, there is no reason to consider that the quantity of parking proposed would lead to inconsiderate parking that would harm highway safety.
21. The parking provision in the alternative scheme was greater in proportion to the number of flats proposed. The scheme on the YWCA site also provided less parking than required under the standards, but that is located closer to the town centre such that it would have different parking requirements. As such, I consider that those decisions would not affect my conclusions in this case.
22. For these reasons, I conclude that the proposed development would not cause harm to pedestrian or highway safety. As such, it would comply with policy T9 of the LP that requires parking below the maximum level set out in vehicle parking standards.

Other matters

23. The legal agreement under S106 agrees financial contributions toward primary education and health, along with details of the affordable housing contributions. Regulation 123(3) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) restricts the use of pooled contributions toward items that may be funded via CIL. If five or more obligations for a project or type of infrastructure have been entered into since 6 April 2010 and it is a type of infrastructure that is capable of being funded by CIL, no more contributions may be collected toward that project.
24. In this case, the contributions toward primary education are proposed to be spent on the provision and/or improvement of facilities for the education and/or care of children within the Harlow Group 6 (Hare Street/Little Parndon) Forecast Planning Group. The contributions toward health provision would be put towards NHS England capital expenditure projects for the provision of additional primary healthcare services within two specified surgeries. These financial contributions are substantial and, given how the contributions are to be spent, it is clear that they would not be caught by the pooling restrictions.
25. No provision toward open space, sport and recreation facilities is provided within the legal agreement as it was in the alternative scheme. I have referred to the relationship between the site and Town Park located a short distance away and a need for such contributions has not been presented in this case. On that basis, the proposal would not conflict with policy L2 of the LP that seeks to provide access to public open space and playgrounds or play areas for occupiers of development.
26. I conclude that the financial contributions contained within the S106 legal agreement would mitigate the effects of the proposed residential units on local primary school and health care provision. As such, they would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the CIL Regulations. On this basis, the S106 legal agreement is of significant weight in favour of the proposal.
27. I understand that the history of Harlow as a new town separated employment and residential uses and that the proposed development would mix the uses in a manner that does not reflect the original development of the new town. I note that the neighbouring industrial unit is in use as a recycling depot, which may cause some dust. However, the neighbouring uses would not materially affect the living conditions of the occupiers of the proposed flats, especially as the proposed car park separates the building from the neighbouring use.
28. The design of the proposed building reflects that of surrounding development and would provide a gateway building at the edge of the town. The closest residential dwellings are separated from the proposed building by the office parking and the wide Elizabeth Way. As such, it would not harm the character and appearance of the surrounding area or cause overlooking that would affect the living conditions of nearby residential occupiers.
29. The Council state that they have a five year supply of deliverable housing sites as required by the National Planning Policy Framework (the Framework), but this is disputed by the appellant. I have not identified any conflicts with

relevant policies within the Development Plan or Framework. As such, there would not be adverse impacts arising from development of the site that could significantly and demonstrably outweigh the benefits. I conclude that the proposal would comply with the Development Plan and the Framework as a whole. As such, my decision would not be affected whether or not there is a 5 year supply of deliverable housing land.

Conditions

30. To meet legislative requirements, a condition shall be imposed to address the period for commencement. I shall also impose conditions for the following reasons. A condition specifying the relevant drawings is necessary as this provides certainty. A condition is necessary for samples of materials to be submitted and approved prior to development commencing to ensure that they would maintain the character and appearance of the area. Approval, implementation and completion of landscaping works, including hard surfacing, means of enclosure and large canopied tree species within the car park, are necessary prior to development commencing in order to ensure the development would reflect the character and appearance of the area. A condition is necessary to protect the trees in and around the site during the course of development in order to protect the character and appearance of the area.
31. Also, a condition is necessary to provide, prior to development commencing, a construction method statement to maintain highway safety and protect local living conditions. A condition is necessary to ensure that the footway across the site fronting on Burnt Mill is reconstructed prior to first occupation in order to ensure accessibility to the development and to maintain highway safety. A condition is necessary to ensure vehicle and cycle parking and turning, including for powered two wheelers, is provided to meet the needs of the occupiers of the proposed dwellings in order to protect highway safety. A condition is necessary to provide residents with a Residential Travel Information Pack to promote sustainable transport.
32. Conditions requiring details, implementation and maintenance of surface water drainage after completion of the development are necessary in order to reduce the impact of the development on flooding and manage run-off flow rates. In some cases I have amended the wording of conditions suggested by the Council in the interests of clarity.
33. I have not included a condition limiting the use of the building to office use. Whilst such a condition would retain part of the building in an employment use in accordance with policy ER6, such a condition would restrict statutory rights that should be removed only in instances of specific and precise justification. I find no exceptional circumstances in this case such as to warrant the removal of these rights.

Conclusion

34. For the above reasons and taking into account all other matters raised, no matters have been found to outweigh the identified policy compliance. The proposal would be a sustainable form of development and I conclude that the appeal should succeed.

AJ Steen INSPECTOR

relevant works shall be carried out in accordance with the approved sample details.

- 4) No development shall commence until 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:
- i) means of enclosure and retaining structures;
 - ii) boundary treatments;
 - iii) hard surfacing materials;
 - iv) details to minimise discharge of surface water onto the highway;
 - v) large canopied tree species within the car park areas and the use of subterranean crate planting systems;
 - vi) detailed method statement, including site preparation, planting techniques, aftercare and programme of maintenance for a period of 3 years following completion of the scheme.

The landscaping works shall be carried out in accordance with the approved details during the first planting season following completion of the development.

- 5) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) safe access into the site;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in constructing the development;
 - v) wheel washing facilities;
 - vi) a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 7) Prior to first occupation of the development the footway across the entire site frontage on Burnt Mill shall be reconstructed, and it shall include a dropped kerb crossing with tactile paving across the existing bellmouth access and a new footway connection tying into the existing footway on the eastern side of the junction of Burnt Mill and Elizabeth Way.
- 8) No part of the development shall be occupied until space has been laid out within the site in accordance with drawing nos. 16116_PL02 Revision A and

- 16116_PL04 Revision A for 158 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
- 9) No part of the development shall be occupied until space has been laid out within the site in accordance with drawing nos. 16116_PL02 Revision A and 16116_PL04 Revision A for bicycles and powered two wheelers to be parked and that space shall thereafter be kept available for the parking of bicycles and powered two wheelers.
- 10) Prior to the occupation of any dwelling hereby permitted a scheme for the provision of a Residential Travel Information Pack for sustainable transport by occupiers of the dwellings hereby permitted shall be submitted to and approved in writing by the local planning authority. The scheme for the provision of a Residential Travel Information Pack for sustainable transport shall be implemented as approved and this implementation shall commence prior to the occupation of any dwelling hereby permitted.
- 11) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 12) No works shall take place until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies has been submitted to and approved in writing by the local planning authority. The development shall be carried out and retained in accordance with the approved details.