



Appeal Decision

Site visit made on 24 November 2010

by **Keith Manning BSc (Hons) BTP MRTPI**

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

Decision date: 10 February 2011

**Appeal Ref: APP/C5690/A/10/2135623
66-76 Loampit Vale, Lewisham, London SE13 7SN**

- 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 Trademark Homes against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/10/73350, dated 19 January 2010, was refused by notice dated 21 July 2010.
- The development proposed is the construction of a five storey building to provide 2 commercial units (Use Class A1) on the ground floor and 6 one bedroom, 8 two bedroom, 10 three bedroom and 2 four bedroom self-contained flats incorporating balconies and a roof garden, together with 2 car parking spaces and 77 bicycle spaces, refuse bin stores and landscaping.

Procedural matter

1. The description of the proposed development differs in its mode of expression as between the original application form and the appeal form. For clarity and consistency I therefore deploy, for the purposes of determining the appeal, the description used by the Council on its decision notice.

Decision

2. I dismiss the appeal.

Main Issues

3. I consider the main issues to be as follows:
 - The effect of the proposed development on highway and pedestrian safety;
 - The effect of the proposed development on the living conditions of future occupiers;
 - The adequacy of the proposed provision of affordable housing;
 - The adequacy of the proposed development in respect of its ability to generate a proportion of its energy requirements from renewable sources on-site;
 - Whether the proposed development would be in any sense premature; and
 - Whether the proposed development takes the opportunities available for improving the character and quality of the area and the way it functions.

Reasons

4. The appeal site is a corner site and fronts Loampit Vale, a major radial road serving Lewisham Town Centre, and Jerrard Street, which is currently one-way. This provides access to Thurston Road and the retail park contained by the three roads forming a gyratory system. It consists of a traditional terrace of properties with retail units at ground floor level and various premises to the rear. The buildings appear to be at the end of their useful life and ready for redevelopment.
5. The proposed development at issue is for a mixture of uses on the western fringe of Lewisham town centre where regenerative development is both proceeding and anticipated. The principle of mixed use development is not disputed by the Council but rather the manner in which it is proposed to put it into practice is called into question. Although, in the context of the larger adjoining block of property with perceived potential for redevelopment, the site is not large, it is prominently situated and its boundaries are at the back of the existing pavements on Loampit Vale and Jerrard Street.
6. Having examined the wide range of documentation and having visited the site and the surrounding area, I consider the key issues may be simply expressed as I have set them out above.
7. The development plan comprises the London Plan and saved policies of the Council's Unitary Development Plan (UDP). Relevant development plan policy most notably includes policies 3C.23, 3A.5, 3D.13, 3A.9, 3A.10 and 4A.7 of the London Plan and saved policies URB 3 and HSG 14 of the UDP. Relevant national policy and guidance most notably includes Planning Policy Statement 1 (PPS1) Delivering Sustainable Development, Planning Policy Statement 3 (PPS3) *Housing* and Planning Policy Guidance Note 3 (PPG3) *Transport*.

Highway and pedestrian safety

8. No 76 Loampit Vale is built to the back of pavement on its corner with Jerrard Street, reflecting the historic pattern of development. I noted at my site visit that vehicles street frequently enter Jerrard Street from Loampit Vale east of the junction at speeds inappropriate to the restricted level of visibility across the corner, possibly to quickly cross the oncoming traffic and in anticipation of the one-way system, which then encourages rapid acceleration northwards, notwithstanding the parking bays along the site frontage that are referred to in the submitted Transport Statement. The proposed development would do little to improve the visibility at the corner and yet users of the disabled parking spaces proposed would either have to reverse in or out. Although this would be at the northern end of the site, away from the junction, it would nevertheless be relatively close in view of the limited depth of the site and would, in the circumstances, be hazardous. Whilst not formally proposed in the way of an amendment, I note that the appellant would be willing to omit the disabled parking bays. However, this would create conflict with the intentions of policy 3C.23 of the London Plan concerning adequate provision for disabled parking.
9. Bearing in mind the advice of *Manual for Streets* at paragraph 6.3.22 concerning the minimum unobstructed width for pedestrian footways on lightly used streets, let alone those such as Jerrard Street, I am not persuaded that the available pavement on Jerrard Street would be sufficient to safely complement the proposed development. This would be likely to generate

numerous pedestrian movements in the vicinity of the entrance to the proposed retail unit and also access to the large cycle store proposed, whether directly from the carriageway or through dismounting and use of the footway across the Jerrard Street frontage, thereby impinging on the limited space available to pedestrians. These problems would stem directly from the failure of the design to use the opportunity provided by redevelopment to improve an unsatisfactory situation. Moreover, I consider it would be made significantly worse by the development of the appeal site in the manner currently proposed.

10. I am conscious that pedestrian access to the flats would be via the residential entrance proposed on the Loampit Vale frontage. However, I have no evidence that the proposed development would facilitate material improvement of conditions for pedestrians on Loampit Vale and adherence to the proposed building line would either inhibit the aspiration of Transport for London to extend bus lane provision or restrict the available pavement area for pedestrians in circumstances where footfall is likely to increase as a direct consequence of the development, leaving aside the effect of other developments in the vicinity as the area is regenerated. Bearing in mind the poor accident record for this stretch of road described by the Council's Highways Development Manager in response to the planning application, and notwithstanding the lack of formal objection from Transport for London, it seems to me highly undesirable in principle to create a situation where the proposed development would not only exacerbate safety concerns for pedestrians, but would also inhibit potential improvements to bus lane provision by intensifying the pressure on the available pavement space.

11. All in all, I consider that the proposed development has not been adequately addressed in terms of its relationship to existing and potential future activities within the adjacent highways, including those generated directly by the proposed development itself. To my mind, this amounts to a compelling objection on highway and pedestrian safety grounds. PPG13, at paragraph 6, emphasises that the consideration of planning applications should give priority to people over ease of traffic movement and plan to provide more road space to pedestrians, cyclists and public transport in town centres, local neighbourhoods and other areas with a mixture of land uses. On the basis of the evidence available to me, I can only conclude that the proposed development fails to observe that principle.

12. I am conscious that the appellant company has submitted a travel plan. However, whilst informative, and laudable in many respects, this would not lead to any specific measures to address the problems I have identified above. In any event PPG13 emphasises that the existence of a travel plan cannot justify unacceptable development; and, for the reasons I have given, I do not consider the proposed development to be acceptable in highway and pedestrian safety terms.

Living conditions for future occupiers

13. The Council's Highways Development Manager has indicated serious reservations about the desirability of family housing, in view of the site's location within the gyratory system. However, the Council accepts the principle of mixed use development, including housing, in this location and, notwithstanding the highway and pedestrian safety issue addressed above I have no reason to take a different view. Such matters are capable of resolution in the context of appropriate measures and the site does have the

potential to be an acceptable residential environment if conditions outside can be made adequately safe for pedestrians and all other relevant matters internally are satisfactory.

14. Although the Council's space standards for the proposed accommodation would generally be met, it is clear from the Council's analysis that there are aspects of the arrangement of space and the access to the flats that may be questionable in the context of the numerous development plan intentions referred to. However, an undue level of prescription can inhibit innovative design informed by market requirements and it seems to me that many of the Council's reservations concern preferences rather than hard and fast requirements and, in view of the discursive nature of the Council's statement in this regard, I am not satisfied that it demonstrates such a clear and unacceptable conflict with the intentions of relevant policy that refusal would be warranted solely on the grounds of quality of accommodation.
15. That said, the absence of a second lift to facilitate the achievement of local wheelchair housing standards would to my mind conflict with the basic underlying intentions of policy 3A.5 of the London Plan concerning housing choice, albeit that the policy effectively delegates the detailed implementation of the 10% norm established by the policy to Development Plan Documents to be prepared by the Boroughs. From the officer's report it appears that Lewisham Council would decline to accommodate wheelchair users in a development with only one lift for, good practical reasons. On that basis I consider that compliance with the relevant development plan policy would be 'technical' rather than practically useful.
16. Similarly, reliance on Cornmill Gardens for children's play provision would be of dubious practicality owing to the nature of Loampit Vale and a financial contribution would necessitate the completion of a planning obligation. Although such an obligation may be intended, it is not before me and I am unable therefore to place weight on that intention as a means of overcoming evident conflict with the intentions of policy 3D.13 of the London Plan. It does seem to me clear that, especially if the proposed scheme were to be developed in isolation from any other re-development within the gyratory system, that physical separation would prevent comprehensive accord with the intentions of relevant policy in this respect.
17. Overall, while I accept that this is a central urban site and that there would be general compliance with space standards, it is clear to me that there are aspects of the scheme that are unsatisfactory in terms of the expectations set out in the development plan. While I have no doubt that such matters could be resolved through effective dialogue and the emplacement of appropriate measures including financial contributions for off-site works as necessary, I consider that the living conditions for future occupiers would be materially diminished by the doubtful utility of the 10% wheelchair housing intended and by the limitations identified in respect of provision for children's play. These shortcomings weigh against the development as currently proposed.

Affordable Housing

18. The 'planning policy statement' submitted with the application indicates that 40% of the residential units are intended to be affordable housing, in the form of shared ownership. Notwithstanding the strategic target of 50% affordable provision embodied in policy 3A.9 of the London Plan, negotiation of the affordable content of individual schemes is a matter for the Boroughs in line

with the principles set out in policy 3A.10 of the London Plan. Moreover, the strategic objective is to achieve 70% social housing and 30% intermediate within the affordable stock constructed. The Council indicates that, in the light of its UDP target of 35%, the percentage of affordable units proposed would be acceptable, but that the mix should be changed in favour of social rented accommodation to meet identified needs and priorities. It is axiomatic that the proposed scheme could only deliver 'affordable' housing to the extent that it would be commercially viable to do so.

- 19: *PPS3 Housing* makes clear the key role that local planning authorities have in delivering a mix of housing appropriate to identified local needs through the agreement with developers of affordable provision, ideally on-site. In respect of the proposed development at issue there is no evidence, beyond an assertion that shared ownership is considered to be the more appropriate type of provision in this area, which would justify the appellant's intended approach. Although it is indicated that the appellant would be willing to revise the mix, no mechanism in the form of a planning obligation has been put forward. However, the less usual mechanism of a comprehensive planning condition to require an agreed mix and approach to delivery would be available to me if I considered the proposed development to be acceptable in all other respects. On the basis of that possibility and the appellant's stated willingness to comply with the Council's wishes based on identified need, I do not consider this issue to be decisive in itself. Nevertheless, I have no specific evidence as to what might be viable in the circumstances of the site and the uncertainty and lack of specificity surrounding this issue must therefore weigh against the scheme.

Renewable Energy

20. A Sustainability Assessment, which includes an extensive checklist, was submitted with the application. It generally demonstrates a comprehensive approach to the matter of sustainability. However, although the checklist refers to policy 4A.7 of the London Plan, it does not directly address the presumption in that policy that developments should achieve a 20% reduction in carbon dioxide emissions through the incorporation of on-site renewable energy generation. It simply confirms that no on-site renewable energy generation is currently planned due to space restrictions and the proposed development of a 'green roof' on top of the building. Notwithstanding that the building is designed to be energy efficient this does not, to my mind, meet the fundamental intention of the policy that all schemes should meet that target unless it is demonstrably not feasible to do so. Whether or not the Council requested such information, there is no cogent evidence to substantiate the assertion that renewable energy is not a viable option for a project of this scale. That in itself creates a conflict with the development plan policy referred to. Bearing in mind the strategic London-wide intention to promote on-site renewable energy generation embodied in the policy, an exception to that intention would require more specific justification.

Prematurity

21. Despite its limited size, the appeal site undoubtedly presents an opportunity to contribute to the ongoing regeneration of this part of Lewisham and is geographically part of the large block contained by the gyratory system and largely occupied by the retail park. Redevelopment of that block is clearly under consideration in the context of the Council's aspirations to promote the

growth and development of Lewisham Town Centre over the period to 2026, including through the medium of the forthcoming Area Action Plan.

22. Insofar as there appears to be no firm commitment as yet to the redevelopment of the retail park or the physical form that such development might take, I am sympathetic to the dilemma that this creates for the appellant, whose intention to redevelop the south-western corner of this major block of property does seem to be certain and more immediate in terms of timescale, partly in view of the age of the properties within the site.
23. The Design and Access Statement devotes substantial effort to formulating a credible scenario of the form that the mooted wider redevelopment effort might take and how the appeal site might relate to it. While I consider it very possible that a wholly comprehensive approach to the block might not be achievable within a reasonable timescale, if at all, I am also sympathetic, in principle, to the views expressed by the Design and Conservation Panel concerning the minimum requirement of an agreed comprehensive masterplan. In an ideal world, there would be virtue in that approach.
24. Realistically, however, bearing in mind the advice concerning prematurity in *The Planning System: General Principles*¹ and the relatively discrete nature of the site relative to the remainder of the block, I am not satisfied that, in practice, the redevelopment of the appeal site should necessarily be held back pending resolution of the uncertainties associated with the immediately adjoining land. I note that prematurity forms no part of the Council's reasons for refusal, notwithstanding that the planning officer's report notes that, as well as being acceptable in its own right, the redevelopment of the appeal site needs to fit within the wider emerging context of the Town Centre.
25. While that would require a form of development on the site that could withstand alternative eventualities on the adjoining land, the manner in which such an outcome could be achieved is not a matter for me, albeit I have no doubt that an appropriately well conducted dialogue between interested parties could deliver a solution.

Realisation of available opportunities to improve the area

26. In the context of the above considerations, I note from the appellant's final comments that at least some of the difficulties concerning Jerrard Street could readily be designed out of the proposed scheme of redevelopment, reflecting perhaps a wider willingness on the part of the appellant to be flexible in response to the Council's ideas and requirements. However, I am obliged to determine the appeal as I find it, in the light of the development plan and other material considerations.
27. The advice of PPS1 *Delivering Sustainable Development* is one such consideration and is of particular relevance in this case. It is quite clear in its advice that good design is indivisible from good planning and that design which fails to take the opportunities available for improving the character and quality of an area and the way it functions, should not be accepted.
28. Whatever the future of the retail park adjoining the appeal site, it is clear that Loampit Vale is a key approach to the town centre in need of both functional and visual improvement and that this aspiration is being progressively embodied in schemes such as that most recently approved for the site of the

¹ ODPM 2005

Thurston Road Industrial Estate. The aspiration is acknowledged by the appellant in respect of Loampit Vale, albeit that the current proposal would constrain the ability to provide suitably generous pavement and accommodate the Transport for London operational aspirations. Given the prominence of the appeal site on the corner site and the likely importance of Jerrard Street in any scenario of area improvement, I consider that the treatment of the frontage to the latter is of equal importance in visual design terms as that to Loampit Vale. The functional inadequacies previously referred to, with an associated utilitarian appearance, would not amount to the quality of approach sought by PPS1 or the underlying intention of UDP policy URB 3 concerning urban design.

29. Moreover, for the reasons previously given, I consider that there are compelling highway and pedestrian safety reasons to ensure an appropriate generosity of pavement in finalising the building lines around the site on its road frontages. The opportunity presented by the redevelopment of the appeal site to effect such improvements would not be repeated within a relevant timescale and to lose it by default would be a stark example of a failure to take an available opportunity to improve the character and quality of an area and the way it functions. The nature and mechanics of just how that opportunity should be realised are not matters for me. However, I am clear that to grant planning permission for the proposed development as currently conceived would contradict the clear intention of PPS1 that is central to this issue.

Overall Conclusion

30. It is clear to me that there are a number of ways in which the proposed development either conflicts harmfully with or fails to fully reflect the intentions of relevant development plan policy and I have highlighted what I consider to be the most significant ways in which those shortcomings are manifest. There are in my view compelling highway and pedestrian safety reasons to reject the scheme, as currently conceived. Aspects of compliance with the development plan would in any event require the existence of a planning obligation, rather than an indication of intent. The affordable housing requirement could be addressed by planning condition; but a negotiated agreement that relates what is viable to what is needed is to be preferred. I acknowledge that the current uncertainties pending an agreed comprehensive approach to the development of the larger block within which the appeal site is located pose a dilemma for the appellant but, all other things being equal, I do not consider that, as matters currently stand, the re-development of the site need be held up on grounds of prematurity. However, the detailed relationship of the proposed scheme to the Loampit Vale and Jerrard Street fails to recognise what is reasonably required and possible in practical and to a certain extent visual terms and, in doing so, would contradict the important planning principle set out in PPS1, namely that development should take available opportunities to improve the quality and appearance of an area and the way it functions.

31. I am conscious that in developing the concept and proposals for the site to the stage of the planning application at issue has been a considerable undertaking, not least in terms of the contextual analysis that is evident. However, it seems to me that the scheme as currently proposed does have significant flaws and, while I have taken into consideration all other matters raised, none are sufficient to alter the overall balance of my conclusion that, for the reasons given above, the appeal should be dismissed.

Keith Manning Inspector

