



Appeal Decision

Hearing Held on 8 August 2018 and 30 October 2018

Site visit made on 8 August 2018

by Mike Worden BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2019

Appeal Ref: APP/G2625/W/17/3190739

St Peters Methodist Church, Park Lane, Norwich, Norfolk, NR2 3EQ

- 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 Ms Tomasina Winch-Furness of the Interesting Building Company Limited against the decision of Norwich City Council.
 - The application Ref 15/01928/F, dated 21 November 2015, was refused by notice dated 21 July 2017.
 - The development proposed is change of use from D1 (place of worship) to C3 (dwelling houses). Demolition of modern extensions, removal of two trees, and general redevelopment of the site to provide 20 new residential units and associated landscaping and parking.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Norwich City Council against the Interesting Building Company Limited. This application is the subject of a separate Decision.

Procedural Matters

3. The appellant submitted updated viability and cost information just prior to the opening of the hearing. The information was an update to the information which had been submitted with the application originally. I decided to accept this new evidence as I considered it would be helpful to my decision, but to adjourn the hearing to enable all parties to consider it and submit their comments. The hearing on the 8 August then proceeded to deal with other matters and the site visit before the adjournment. The hearing resumed on 30 October.
4. At the resumed hearing, I was asked to receive new additional financial information from a local resident relating to the cost of one of the proposed units. After listening to the resident's reasons for the late submission, and the views of the parties, I considered that it could have been submitted in line with the timetable I had previously set. I therefore declined to accept that evidence which would have necessitated an adjournment, consideration by other parties and resumption on another day.

Main Issue

5. The main issue is whether the development would provide the maximum reasonable level of affordable housing contributions in accordance with the development plan and national planning policy.

Reasons

6. The appeal property is a collection of church buildings on a prominent corner site in the Heigham Grove Conservation Area. The appeal site lies to the west of the city centre in a residential area comprised of mainly late 19th and early 20th century houses. The main church building is a 1930s structure. A former Wesleyan Chapel, now a church hall, lies next to it. There are some modern extensions and an older Boys Brigade building to the rear. Together the buildings are an important part of the character of the Conservation Area and are locally listed.
7. The proposed development would be to demolish the modern extensions, erect a two storey extension to the existing two storey flat roofed extension at the rear of the church hall building and convert the buildings to create 20 units of accommodation. The existing Boys Brigade building would be converted to a two bedroomed house with the other buildings converted and extended to create a mix of one, three and four bedroomed flats.
8. Policy JCS4 of the *Joint Core Strategy for Broadland, Norwich and South Norfolk 2011*, (the Joint Core Strategy) has a target for 33% affordable homes to be provided on all schemes of 16 dwellings or more. The Policy indicates that this requirement may be reduced and the balance of expected tenures amended where it could be demonstrated that site characteristics, including infrastructure provision together with the requirement for affordable housing would render the site unviable in prevailing market conditions, taking account of availability of public subsidy.
9. Policy DM33 of the *Norwich Local Plan Development Management Policies Plan 2014* (the DMP Plan) sets out the Council's approach to securing planning obligations and development viability. It sets out a general principle that planning obligations will be used to secure, amongst other things, the delivery of affordable housing. It also states that policy requirements may be negotiated if scheme viability was demonstrably compromised, and requirements may be reduced by agreement.
10. The Council and the appellant both agree that it would be appropriate, given the small numbers involved and the location and reluctance from providers to manage them, that there should in principle be a financial contribution made towards affordable housing provision off-site rather than on-site provision. I agree with that principle in this case, given the evidence before me.
11. In the light of the updated viability and cost evidence, the Council and the appellant reached agreement on many of the costs and variables assumptions within the viability assessment. In the Statement of Common Ground, the parties were not in agreement in terms of land value, leasehold/freehold split, and cashflow/financing arrangements. At the resumed hearing the parties confirmed that they had reached agreement on land value, leaving only the other two elements of the viability assessment in dispute between them.

12. As a result of the revised viability assessment evidence submitted in August, the appellant considered that the maximum reasonable contribution that could be made for affordable housing was £3,980. In reviewing that assessment the Council considered that it should be around £205, 534. A local resident, Dr Boswell, presented evidence at the hearing that it should be around £489, 000 taking account of the appellant's viability evidence some of which he challenged.
13. The agreement on land value made between the Council and the appellant immediately prior to the resumption of the hearing meant that there would be a difference of around £38,000 between the two parties on what the overall maximum reasonable financial contribution should be, this difference relating to leasehold/freehold split and cashflow/financing arrangements.

Land Value

14. At the hearing the Council and the appellant agreed that a benchmark land value of £630,000 should be assumed. This figure was on the basis of an Existing Use Value plus approach, the method advocated in the revised *Planning Practice Guidance on Viability* (the PPG on viability). The Council referenced a number of other sites within the Norwich area including former church sites at Potters House and Silver Road and a community hall. In addition, further information was provided in relation to nature of the offers for the site. Having re-assessed that information, the other sites highlighted, and placing less reliance on other examples which were considered not as comparable, the appellant agreed with the benchmark land value for the site proposed by the Council. This is Existing Use Value of £525,000 plus an addition of 20% premium for the land owner.
15. Whilst I have taken into account the submissions of Dr Boswell, having regard to the evidence before me on land value, I have no reason to doubt that £630,000 would be an appropriate benchmark land value and that its method of assessment accords with the approach supported by the PPG on viability. I therefore conclude that the agreed benchmark land value of £630,000 is an appropriate figure to be used in the viability assessment.

Leasehold/Ground rent

16. The Council's assessment of viability assumes that the 20 units would be leasehold, whereas the appellant assumes 12 units to be leasehold and eight freehold. This would make a difference to amount of ground rental income which could be brought to the scheme.
17. The appellant contends that there are structural, legislative and commercial reasons as to why it has proposed the split it has. I have had regard to the House of Commons Briefing Paper of July 2018 which is concerned with the issue of leasehold and commonhold reform and in tackling unfair practices in particular.
18. I fully accept that the legislative position on the use of leasehold ownership may alter in the future. However, I am persuaded by the appellant's arguments that the decision in relation to leasehold/freehold split in the proposed scheme before me rests with the appellant and that primarily that decision would be made on a commercial basis. I also consider that there would be no control over the ultimate split between the two tenures, in planning terms.

19. Those commercial considerations include advice to the appellant from local agents which indicate that buyers would feel more secure with occupying a freehold property than a leasehold property and the structural constraints which would mean that some properties cannot be freehold as they would be apartments and would not have an individual roof. The appellant confirmed at the hearing that such a split would be workable in terms of the future management of the properties, notwithstanding the Council's view that the management of the heritage building can be best achieved by granting of a leasehold in the units. On the basis of the evidence before me, I conclude that the assumptions made by the appellant in the viability assessment in terms of leasehold/freehold split and its impact on ground rental income are reasonable.

Cashflow/finance costs

20. The appellant has not provided a detailed construction programme, and I would accept that at this stage such a detailed programme might be premature and unreliable. However, for the purposes of assessing cashflow a reasonable assumption needs to be made. The parties differ in their assessments by one month in the cost window and one month in the receipts window. This would have the effect of around a £5,000 difference in the overall affordable housing contribution that could be offered.
21. At the hearing there was disagreement on past assumptions on cashflow made by then representatives of the District Valuation office and Council, none of whom were present. Nevertheless the respective windows assumed by the appellant do not seem unreasonable to me given the uncertainties in the construction of a major building project on a tightly constrained site in a residential area. I therefore conclude that the values assumed by the appellant on the issue of cashflow are reasonable and should be adopted.

Conclusion on Main Issue

22. The parties have reached agreement on build costs and all other variables on the viability assessment, including profit, preliminaries, professional fees and others. I have taken into account the evidence, made both in writing and orally of Dr Boswell who considers that significant savings could be made on items such as contingency, preliminaries and professional fees. However from the evidence before me, I have no reason to consider that the appellant's assumptions are unreasonable. They have been based upon the advice of professional valuers and surveyors and the Council has agreed with them.
23. The appellant states that the value of some items will not be fully known until closer to or during construction periods and when contractors are appointed. However, for the purposes of a viability assessment at the planning application stage, I am satisfied that the assumptions agreed between the Council and appellant are reasonable and appropriate.
24. With the benchmark land value set at £630,000 and accepting the appellant's estimates for ground rents income and cashflow, the maximum reasonable financial contribution would be £167, 172, compared to the Council's figure of £205, 534.
25. Paragraph 57 of the National Planning Policy Framework (the Framework) and the PPG on viability both place emphasis on the undertaking of viability assessments at the plan making stage rather than at the planning application

stage. Paragraph 57 of the Framework indicates that where up to date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It also indicates that it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.

26. A number of local residents contend that there are no transitional arrangements set out in the Framework and the PPG on viability, and that the appellant has not demonstrated that there are particular circumstances which justify the need for a viability assessment at the application stage.
27. The PPG on viability provides detailed guidance on the role of viability assessments at the plan making stage and indicates that plans may use site typologies to determine viability or in the case of strategic sites undertake site specific assessments. However, taken together, paragraph 57 of the Framework and the PPG on viability set out examples of circumstances when viability could be assessed in decision taking. These include whether the plan and the viability evidence underpinning it is up to date. The Joint Core Strategy pre-dates the Framework and its affordable housing requirements are based upon viability evidence from 2010. Whilst Policy JCS4 is in general conformity with the Framework and attracts significant weight, the viability evidence supporting it is not sufficiently up to date and cannot be relied upon.
28. The appeal site is a complex heritage development on a tight brownfield site and the proposal is a part conversion, part demolition and part extension form of development. The detailed nature of the viability assessment prepared involving specialist cost consultants highlights the need for a bespoke approach to viability in the absence of detail within the development plan. I therefore agree with the position of the appellant and the Council in that it is entirely appropriate to consider the requirements of Policy JSC4 on this proposal in the context of a specific viability assessment. In this regard I consider that both parties have demonstrated that there are particular circumstances requiring this approach in accordance with the second sentence of paragraph 57 of the Framework.
29. The first sentence of paragraph 64 of the Framework indicates that for major development, which this proposal would be, it should be expected that at least 10% of the homes to be delivered should be available for affordable home ownership. However, the Council and the appellant have submitted evidence as to why on site provision would not be appropriate in this case, and the Council has highlighted how securing the maximum reasonable financial contribution for use to provide affordable or socially rented housing off site, would best help address meeting the need for affordable housing in Norwich. I consider this approach would not conflict with the first sentence of paragraph 64 of the Framework, which is an expectation not a requirement, and having regard to the material considerations in this case.
30. For the reasons set out above, I conclude that the figure of £167, 172 would be the maximum reasonable level of affordable housing contribution which could be provided in accordance with Policy JCS4 of the Joint Core Strategy and Policy DM33 of the DMP Plan. This contribution would also accord with the provisions of the Framework and the PPG on viability.

31. At the hearing, the appellant submitted a Section 106 agreement which sought to secure the provision of this contribution. Whilst signed by the Council, the agreement had not been signed by the Trustees for Methodist Church Purposes, a custodian freehold owning body of the land. They required some changes to the agreement which could not be agreed with the Council. The appellant then submitted a Unilateral Undertaking (UU) for the same purpose and has asked me to consider it.
32. The UU seeks to secure a financial contribution for off-site affordable housing provision of £167,172 which for the reasons set above I consider it to be the maximum reasonable level which could be provided, and would be necessary, related directly to the development and fairly related in scale and kind. As such the need for the contribution would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests of for planning obligations set out in the Framework.
33. However I have some concerns about the submitted UU, its execution and thus whether the Council could rely upon it to secure the contributions. For example, Recitals (B) and (C) of the submitted UU confirm that the Board, and not the Managing Trustees is the freehold owner of the land. It is therefore important that the Board should be bound by the obligations, so that its successor in title will also be bound. However, the obligations in the document are worded as being binding upon the Managing Trustees, and not the Board. Clause 15.1 of the UU states that obligations on the part of the Managing Trustees shall apply to them only and not to the Board. Clause 4.1 which activates the main obligation to pay an affordable housing contribution in Schedule 2, is given as binding on the Managing Trustees. Since the Board, and not the Managing Trustees, is the owner I consider that the obligations would not be enforceable.
34. Furthermore, if the Board transfers ownership to a party other than the Buyer, that party would also not be bound. I have no details of the Exclusivity Agreement referred to in the UU, whether the Buyer could withdraw from it or whether or not it could be cancelled. Therefore I cannot be sure that the Buyer would definitely become the owner of the site.
35. For the reasons set out above, I am not satisfied that the submitted UU would make the necessary provision for off-site affordable housing contributions. I therefore conclude that the proposed development would not accord with Policy JCS4 of the Joint Core Strategy and Policy DM33 of the DMP Plan or accord with the provisions of the Framework and the PPG on viability.

Other matters

Daylight/Sunlight

36. The proposal would make external alterations to the existing buildings and include an extension to the rear of the church hall building. It would have an impact on the levels of daylight and sunlight reaching some of the rooms in some of the adjacent residential properties which lie adjacent to the site. On the site visit, I visited 77 Park Lane, 79 Park Lane, 4 Doris Road and 6 Doris Road and went in to some of the rooms concerned, at the request of the occupants.

37. The appellant has submitted a Daylight/Sunlight report and its findings are not disputed by the Council. A significant number of the 74 windows tested had existing daylight levels that did not exceed BRE levels. The proposal would result in a slight reduction on levels of daylight reaching those properties, but it was shown that the impact would not be less than 0.8 of its former value, in accordance with BRE guidelines. This would mean that occupants would be unlikely to notice a difference in terms of daylight levels.
38. In terms of sunlight, there are a small number of windows which would be affected in terms of Annual Probable Sunlight Hours. These are at 79 Park Lane and 6 Doris Road. In particular there was a concern from the occupant of 79 Park Lane in terms of impact on the first floor bedroom/study and on a wet room. At the hearing, the appellant confirmed that there could be a minimal loss of sunlight in the winter months to these rooms. However, none of the windows would fail all three BRE criteria as a result of the proposal and therefore in accordance with BRE standards, I consider that the proposal would not have a significantly harmful impact upon neighbouring properties.
39. On the basis of the evidence before me, I consider that there would be no material harm to living conditions of the occupants of neighbouring properties with regard to daylight and sunlight as a result of the proposal.

Outlook

40. The proposed two storey extension at the rear of the church hall would be set in by around 3 metres and incorporate a pitched roof and the proposed development would not increase the height of the development immediately on the boundary with 79 Park Lane. I consider that the design of the proposed development would avoid any material loss of outlook or sense of overbearing to the occupants of the adjacent properties.

Flood risk and drainage

41. At the hearing, a local resident articulately demonstrated his concerns about flood risk and gave an in depth account of the history of flooding issues in the local area and how, in his view, the existing sewer system in the local area had become overloaded as a result of intensification of development in the local area. Other residents expressed general concerns about the issue of flood risk and the impact of the proposal on the wider area.
42. The Lead Local Flood Authority (LLFA) objects to the proposed development. In response, a further site specific flood impact assessment has been undertaken which has included potential measures which could address the concerns which primarily relate to the Boys Brigade building and the bedrooms in 3 lower ground floor units. These include resistance measures to prevent surface water from entering the development to a depth of 600mm and resilience measures to assist the building recovery process in the event of water entering the development.
43. The only risk of flooding is from pluvial surface water flooding. The LLFA and the Council have suggested that a condition could be imposed, if the appeal were to be allowed, to secure such measures. I am satisfied that with such measures secured, the proposal would not cause harm to the living conditions of future occupants with regard to flood risk.

44. The site is an existing developed site and is impermeable. I consider that if the appeal were to be allowed, then subject to the imposition of a condition requiring a detailed surface water drainage strategy to be submitted to and approved by the Council, and then implemented, the proposal would be acceptable in terms of impact on overall flood risk. I have also had regard to the advice of Anglian Water in relation to drainage capacity and consider that the proposal would not place unacceptable pressure on the sewerage network.

Parking and highway safety

45. The proposed development would incorporate 11 off road spaces, compared to the existing seven spaces. Ten of the spaces would be located along the Park Lane frontage and one would be within the curtilage of the converted Boys Brigade building. Policy DM32 of the DMP plan seeks to promote car free or low car housing in appropriate locations including controlled parking zones, areas where there is good access to public transport into the city centre and vacant or underused buildings close to or within district centres. The appeal site is in a controlled parking zone and is in a highly accessible location within walking distance of the city centre. I therefore consider that the proposed car parking provision would be acceptable and would accord with Policy DM32 of the DMP Plan.

46. Although I understand the concerns of local residents regarding highway safety and was able to observe the traffic flow at the Avenue Road/Portersfield Road/Park Lane junction at their request, the site has an existing use, and I have no evidence before me that the proposed development would cause harm to highway safety.

Community use

47. The existing buildings are used for a number of religious and community activities, although services ceased at the site in 2013. At the time of the site visit, religious services were occurring on part of the site. However, significant other parts of the buildings are unused or under used. The site has been marketed for community uses but without success. I therefore consider that the proposal would accord with Policy DM22 of the DMP Plan which seeks to encourage the provision and enhancement of community facilities including protecting existing community facilities and which identifies circumstances in which losses would be allowed.

Character and appearance

48. The appeal property is locally listed by the Council and lies within the Heigham Grove Conservation Area (the Conservation Area). The Conservation Area consists of predominantly 19th century terraces and villas and its character is of a Victorian housing suburb. The immediate area around the appeal site is more densely developed and with less greenspace than some of the other parts of the Conservation Area. I consider that the appeal property currently makes a valuable contribution to character and appearance of the Conservation Area.

49. The proposed development would remove the modern extensions and retain the principal and architectural features of the key buildings on the site. The main proposed extension would be to the rear. The proposed development would respect the architectural and historical merit of the property and I consider would not be harmful to its character and appearance.

50. Having regard to paragraph 193 of the Framework, I consider that the proposed development would not harm the designated heritage asset of the Conservation Area. Having regard to section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I consider that the proposed development would preserve and enhance the character and appearance of the Conservation Area.

Conclusion

51. For the reasons given above I conclude that the appeal should be dismissed.

Mike Worden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Kemp BSc (Hons) PGDL MRICS	Director, DRK Planning Ltd
Tomasina Winch-Furness	The Interesting Building Company
Richard Little BSc	The Interesting Building Company
Richard Aldous	Savills
Sarah Leggo BEng (Hons) LCEA	Create Consulting Engineers
Mark Geddes IEng MICE	Richard Jackson Ltd
Robert Dale FRICS	Daniel Connal Partnership
David Everitt	Trustees of St Peter's Methodist Church

FOR THE LOCAL PLANNING AUTHORITY:

Mark Brown MRTPI	Norwich City Council
Robert Butler MRICS	District Valuation Office

INTERESTED PERSONS:

Mr Ben Fullbrook	Landmark Chambers (on behalf of local residents - Mr and Mrs Gowing, Ms Lee Hooper, Mr Andy Royall, Mr Richard Povey and Dr Andrew Boswell)
Dr Andrew Boswell	Local resident
Ms Lee Hooper	Local resident
Arthur Paxton	Local resident
Rosemary Le Fevre	Local resident
Councillor Denise Carlo	Local ward councillor
Mr Richard Povey	Local resident
Mr Andrew Royall	Local resident
Mr David Luckhurst	Local resident
Mrs Joan Luckhurst	Local resident
Mrs Janet Steele	Local resident
Mr Bryan Steele	Local resident
Mr Peter Gowing	Local resident
Mrs Margaret Gowing	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement of Common Ground dated 7 August 2018 (8 August)
- 2 Norwich City Council's Comments on the revised National Planning Policy Framework and Planning Practice Guidance (8 August)
- 3 Dr Andrew Boswell's Supplementary Submission on revised National Planning Policy Framework and Planning Practice Guidance on Viability (8 August)
- 4 List of representatives from the Appellant and Norwich City Council (8 August)
- 5 Norwich City Council Rebuttal of Land Value Evidence (30 October)
- 6 Draft Deed of Agreement – Trustees of Methodist Church Purposes, The Interesting Building Company Ltd and Norwich City Council (30 October)