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# Appeal Decision

Hearing held on 28 June and 4 September 2012

Site visit made on 4 and 5 September 2012

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

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

**Decision date: 27 September 2012**

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**Appeal Ref: APP/L5810/A/12/2173244**

**The Old Dairy, Orchard Road, Richmond, Surrey TW9 4NY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Harepath Estates LLP against the Council of the London Borough of Richmond-upon-Thames.
  - The application Ref 11/3382/FUL is dated 13 October 2011.
  - The development proposed is demolition of the existing buildings on site and erection of new buildings comprising basement, ground plus three floors above to provide 1,966 sqm of B1 floorspace, 45 residential units together with car and cycle parking, plus associated works of excavation, construction and landscaping.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appeal relates to the failure of the Council to determine the application. The Council has indicated that, had it been in a position to determine the application, it would have been refused for reasons relating to: the loss of employment land/premises; the mix of residential accommodation proposed; an inappropriate level of affordable housing; the effects of the design and size of the proposal; the standard of the living environment for future residents; the amount and quality of amenity/play space; the effects on residential neighbours; insufficient parking, and; the absence of a mechanism to provide suitable infrastructure contributions.
3. At the Hearing the appellant provided a completed Unilateral Undertaking.

## Main Issues

4. The main issues in this appeal are as follows;
  - The effects on the living conditions of neighbours
  - The standard of residential accommodation/environment proposed
  - The standard of amenity and play space proposed
  - The suitability of the proposed housing mix and tenure types

- The effects on the availability of land/premises for employment/warehousing use
- The effects on the character of the area
- The effects on car parking
- The need for and viability of infrastructure provision.

## **Reasons**

### ***The effect on the living conditions of neighbours***

5. The proposed development would sit adjacent to the boundary of a recent development known as the Garden Road scheme, which is, at least, partially occupied and appears to be nearing completion. At the western side of the Garden Road scheme, the southern elevation contains windows serving the flats which are very close to the appeal site boundary. Figures set out by the Council state that the proposed development would be between 1.6m and 7.7m from these existing windows.
6. The approved plans for the Garden Road scheme show that these windows relate to 2 flats on each floor, with the same arrangement. The window that would be 7.7m away serves a living area of a 2 bedroom flat, which is also served by a window facing westwards, towards the neighbouring supermarket site. The window that would be 3m away serves a kitchen area of a studio flat and the one which would be 1.6m away is adjacent to that part of the same studio flat showing the sleeping area. The studio flat is also served by a window facing to the east.
7. In relation to the studio flats, the approved plans indicate that the sleeping area would be partly separated from the rest of the flat by a partition extending across most of the width of the area; however, the appellant states that the construction has omitted the partition. Notwithstanding this, I consider that the 2 windows facing south will provide the majority of the expected outlook from these studio flats. Whilst outlook would be available from the east facing window, the proposed development would appear significantly dominating from these south facing windows and would have a severe and unacceptable affect on the outlook of these residents. I appreciate that these flats are studios and, according to the appellant, contain a main space that is not subdivided however, taking account of the long and narrow shape, the presence of one window at one of the narrow ends of the flat does not compensate for the unacceptable effect on the other 2 windows serving this main space.
8. In relation to the neighbouring 2 bedroom flats within the Garden Road scheme, the effect on the residents would be less pronounced as it relates to a living area within a larger flat and the distance of 7.7m is greater. However, at such a close proximity I find that the outlook of those neighbours would still be unacceptably affected and this adds to my findings of harm.
9. I have also taken account of the evidence submitted in relation to daylight and sunlight in relation to this matter. I disagree with the appellant's judgement of the effects on the south facing windows on the basis of them being secondary windows and therefore setting aside the effects of the proposal. In relation to

the studio flats, I find that the effects in relation to lighting add to my concerns.

10. The proposed scheme would include construction of part of the building immediately to the south of the garden area of the Garden Road scheme. This would include a single storey section with a garden terrace above and, at the eastern side, a 4 storey section of the proposed building.
11. The garden area of the neighbouring development is already enclosed by the existing building. The proposal would add significantly to this, particularly by the presence of the 4 storey element. I accept that the existing Garden Road scheme has an effect on the garden area, but this would have been apparent to residents before or at the time of their agreement to reside here; the imposition of a new building which may have a significant effect requires separate consideration. I consider that the proposed 4 storey section sited immediately adjacent to the existing amenity area of the Garden Road scheme would appear overbearing and would have a significant and unacceptable effect on the residents when using the amenity area.
12. The proposed first floor amenity area would allow for significant overlooking of the existing neighbouring garden area and the proposed screens of 1.1m height would not limit this to an acceptable level. Such overlooking would be harmful to the privacy of the residents of the Garden Road scheme.
13. Taking these matters together, the proposal would fail to protect neighbours amenity, contrary to the aims of Policies DM DC5 and DM DC6 of the Development Management Policies (DMP).

***The standard of residential accommodation/environment proposed***

14. Proposed flat B2 would have 2 of its 3 bedrooms with windows facing east, towards the neighbouring commercial buildings. One of the bedrooms would be directly opposite a narrow gap between the commercial buildings and the other would face directly on to the flank elevation. I consider that the outlook from these rooms would be severely restricted by the proximity to the site boundary and the adjacent commercial buildings. The narrow gap between the commercial buildings would not be sufficient to provide an acceptable outlook. Whilst I accept that the outlook from bedrooms may not be as sensitive as for living rooms, I consider that the proposal falls significantly short of what is reasonable in this respect. The proposal would be contrary to the aims of Policy CP7 of the CS and DM DC1 and DM HO4 of the DMP.
15. Flat B1 would have 2 of its 3 bedrooms looking north over a very narrow strip of landscaping, the pedestrian access to commercial Unit 2 and then the boundary with the amenity area of the Garden Road scheme. I noted that a very similar situation has been created in the Garden Road scheme, where pedestrians, almost certainly in greater numbers, would pass close to main room windows. I consider that the limited effect on the proposed flat would not be sufficient to justify refusal by itself in this case.
16. Proposed flats on the first floor would also have windows facing towards the commercial buildings to the east. The windows are all indicated as being of obscure glass. The rooms served by the windows would be bathrooms, a kitchen and living/kitchens. In relation to bathrooms, I foresee no unacceptable effects. In relation to the kitchen and the living/kitchens, although I consider that it would normally be desirable to provide windows with

an outlook, the provision of one kitchen in this manner is not unacceptable. The living rooms/kitchens are through rooms and would have a main window facing in the opposite direction which would provide sufficient light and outlook to these rooms

17. The proposed pedestrian access to commercial Unit 3 would be through a shared entrance and then alongside the shared residential amenity and play area, close to the entrances to flats B3 and B2 and their private amenity space. I am satisfied that suitable landscaping could prevent overlooking from the access way into the rooms of those adjacent flats.
18. The proposed parking spaces for disabled drivers are set to one side within the basement car park. Of the 2 lifts within the proposal, only the lift for the private element of the residential units gives access to the basement. Thus, a disabled driver who resides in one of the 4 intended units in B block would need to travel from their parked car for the full length of the basement car park, to get the lift to the ground floor, then transfer from that lift to one of the designed flats on the other side of the development. This would mean accessing the second lift in relation to Unit B4. In this respect, the proposal fails to take sufficient account of the need for inclusive design, contrary to the aims of Policy DM DC1 of the DMP.

### ***The standard of amenity space and play space proposed***

19. Policy DM HO4 of the DMP seeks, amongst other things, the provision of amenity space which is private, usable, functional and safe; is easily accessible and of sufficient size to meet the needs of residents. It adds that accommodation likely to be occupied by families with young children should have direct and easy access to adequate private amenity space. The Council's Supplementary Planning Document *Residential Development Standards* (RDS) sets out the Council's requirements in this respect, in relation to which the Council states that 258sqm of private amenity space is required, sub-divided to serve the 45 flats. In addition around 200sqm of children's play-space is required.
20. The proposal includes around 473sqm of private amenity space at ground and first floor, which exceeds the Council's requirement in quantitative terms. However, a number of the flats are without any private amenity space. The RDS states that ground level family units should have larger private amenity areas and adds that, flats at upper levels may share a communal garden and have private balconies. There are a number of flats at the upper levels which are not provided with balconies. In such cases the residents of these flats will not have ready access to even the most modest form of amenity space that a balcony could provide, contrary to the aims of Policy DM HO4 and the RDS.
21. In relation to the privacy of the private amenity areas, I acknowledge that a number of these areas abut the communal amenity areas and are close to the access to commercial units and other residential units. Whilst this would mean that there would be some limit to the levels of privacy which could be enjoyed, I do not foresee that an acceptable level of privacy could not be created by the careful use of landscaping.
22. There is disagreement in relation to the amount of provision within the proposal. This principally arises as the Council have not included the pathways within the areas as amenity space. The appellant considers that pathways

within the amenity areas are a normal feature which should be included in any such calculation. In some instances, I agree with the appellant's point where pathways are designed as part of the amenity area to provide a route within it; however, in this case, the paths are clearly a means to provide a way of crossing the amenity areas in order to gain access to the flats and are not, in that sense, part of the amenity area. I agree with the Council that the areas of communal space are small, are not readily accessed by those flats with no private space and, in the case of the first floor area, do not provide a readily usable communal space due to its limited size. Therefore, in relation to the provision of communal space, there is further conflict with the aims of Policy DM HO4 and the RDS.

23. The proposed play-space is to be sited directly adjacent to commercial units 1 and 3. Whilst there is no way of knowing the exact nature of a business that will occupy such a unit, it is likely that some such uses will require a relatively tranquil atmosphere for employees to undertake their work. In this sense, the siting of a young children's play-space so close to a business use is likely to give rise to a situation where there is incompatibility between the 2 uses and where activity in the play-space is actively discouraged by some, giving rise to further conflict with the aims of Policy DM HO4 and the RDS.

***The suitability of the proposed housing mix and tenure types***

24. Policy CP14.E of the Council's Core Strategy (CS) states that the private sector element of any development will include an appropriate number of 1 bed units, depending on location; this would be at least 25% rising to at least 75% in more sustainable locations, such as town centres and other areas with high access to transport and facilities. Policy DM HO4 of the DMP adds that development should generally provide family sized accommodation, except in town centres where a higher proportion of small units would be appropriate. It adds that the housing mix should be appropriate to the location. The private housing element would total 32 units of which 30 would be 1 bed units (94%).
25. The PTAL rating for the site is 4, which reflects a reasonable level of accessibility for an outer London location, and I noted the public transport links nearby, including bus routes, North Sheen Station and, a little more distant, Richmond Station. Services and employment opportunities are similarly located with the nearby supermarket and Richmond town centre a short bus journey away.
26. The appellant points out that the planning application site was defined as including the site of the Garden Road scheme; adding that, when the accommodation permitted in the various consents for the Garden Road scheme are taken into account, the addition of the appeal scheme would result in 70% of the units being 1 bed flats. Taking account of the fact that the appeal scheme would appear as part of the same development and would have some common elements, including car parking, this seems a reasonable stance.
27. Whilst the Council considers that a PTAL score of 4 does not reflect a highly accessible location, for the reasons given above, I consider that accessibility is reasonably high. Coupled with the fact that the character of the area is undergoing a change at the moment, wherein the implementation of the Garden Road scheme has introduced a considerable number of flats, the character of the accommodation type, in this respect, would not be unreasonably compromised. In this respect, the proposal is consistent with the

aims of Policies CP14.E and as it would be appropriate to its location, not inconsistent with Policy DM HO4.

28. In relation to the affordable housing element, the proposal includes 29% affordable units. Whilst the tenure split of 77% social rented and 23% intermediate housing is acceptable to the Council, the overall amount of affordable housing is not. The viability of the provision of affordable housing is discussed under a subsequent heading.

***The effects on the availability of land/premises for employment/warehousing use***

29. The existing buildings on the site provide 1,966sqm of warehouse floorspace. The proposal includes the provision of 1,966sqm of employment floorspace, falling within Use Class B1. Policy DM EM2 of the DMP sets out the Council's stance in relation to the loss of employment sites to other uses, including mixed uses. There was disagreement at the Hearing on the interpretation of the Council's Policy DM EM2, whilst there is some support for both interpretations, on balance I favour the Council's view, wherein the final section of the main policy wording relating to proposals for mixed use schemes is a clarification of such schemes with reference back to the use of the term in part (b) ii) of the policy.
30. The policy seeks to retain land, sites and buildings in employment uses as a result of the scarcity of such sites in the Borough. The policy adds that the use for other purposes will only be permitted where, a) an extended and full marketing exercise has been undertaken for the existing use and for redevelopment for employment uses, and either b) a sequential approach has been applied to development for i) solely employment use, ii) mixed use or alternative employment creating uses, where the employment floorspace is retained; such sites should maximise the amount of affordable housing, iii) maximum provision of affordable housing, or c) the location has such exceptionally severe restrictions due to very poor access or servicing arrangements that its continued employment use would be inappropriate. The final section of the policy then goes on to explain that for mixed use schemes certain criteria will apply.
31. The appellant has not submitted any evidence of a marketing exercise for the existing use or for redevelopment for other employment uses. Although it is stated that the existing uses occupy the premises at a discounted rate, this is no substitute for the extensive marketing required to satisfy the first requirement of Policy DM EM2. It is appreciated that the proposal would provide floorspace equivalent to the existing floorspace, but the limited amount of employment sites in the Borough justifies the retention of the site, possibly for redevelopment for a greater amount of employment floorspace, in the absence of a marketing exercise to demonstrate that there is no demand for such a use.
32. The appellant makes reference to paragraph 22 of the National Planning Policy Framework (the Framework) wherein it is stated that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. However, the appellant has not submitted sufficient information to conclude that there is no reasonable prospect of the site being used for employment

generating uses. Therefore, the proposal is contrary to the aims of Policy DM EM2.

33. The Council also criticise the quality and layout of the proposed units. However, I find that there would be nothing unacceptable in the layout of the units and I agree with the appellant that the provision of some areas where natural light is absent or restricted adds flexibility to the units for uses which do not need or actually demand an absence of natural light. Therefore, this does not add to my concerns.

### ***The effects on the character of the area***

34. The proposal would sit between the recent Garden Road residential scheme, houses on Manor Grove, commercial buildings to the east and a large supermarket to the west. The proposal would be a very similar height to the approved Garden Road scheme, around 1m higher, and then reduce in height to the rear of the site towards the 2 storey housing on Manor Grove.
35. Reference was made to a previous appeal decision wherein the Inspector agreed that the additional height at the Garden Road scheme could be accommodated due to its location towards the centre of the larger area, away from the main road frontage and away from the 2 storey houses on Manor Grove. I see the proposal as consistent with this thinking; whilst it would be marginally higher than the adjacent part of the Garden Road scheme, it would reduce in height significantly in steps, towards the rear to 2 storeys in height. This would provide for a suitable transition from the more modestly proportioned houses to the more substantial new blocks.
36. The proposed materials for the elevations include large areas of render, timber cladding and metal spandrel panels. The south elevation also incorporates a 'green wall'. The materials reflect those approved in the Garden Road scheme. Whilst there would be large areas of render, I consider that the placement of windows, doors, other materials and the inclusion of amenity areas and commercial uses would have the effect of breaking up these areas such that they would not appear overwhelming or unduly monotonous. Therefore, the proposal would not have any unacceptable visual effects on the character of the area, including the Buildings of Townscape Merit on Manor Grove and there is no conflict with Policies CP7 of the CS, DM HD3, DM DC1 and DM DC2 of the DMP and the Council's SPD.

### ***The effects on car parking***

37. The proposed development includes the provision of a total of 27 car parking spaces, 18 for the residential units and 9 for the commercial uses. The proposed car parking would be combined with that of the Garden Road scheme which, when account is taken of the loss of 2 spaces for access and the additional flats allowed at appeal, would result in 134 flats and 93 residential car parking spaces (a ratio of 0.69).
38. Policy DM TP8 of the DMP states that the maximum standards will be expected to be met, unless it can be demonstrated that there would be no adverse affect on the street scene or on-street parking. The maximum standard is for 1 space for each 1 and 2 bedroom flat and 1.5 spaces for 3 bedroom units. The appellant considers that a lesser provision is acceptable for a number of reasons: there was a contribution in place for the Garden Road scheme of £50,000 to cover the costs of introducing a Community Parking Zone (CPZ)

and an agreement to prevent residents obtaining a permit if the CPZ was introduced; the submitted Undertaking would prevent any future resident of the appeal scheme from obtaining a resident permit; a car club contribution is included; car ownership in the area is shown as 0.67 per household in the 2001 census.

39. The Council points out that there is no certainty of the outcome of a consultation exercise in relation to a CPZ and therefore, its ultimate implementation. The Council also express fears that cars parked on the surrounding roads can give rise to problems of larger vehicles entering and leaving sites, notably the removals company and the fire station. In relation to the fire station access, the Council presented a draft amendment to the traffic regulations on Garden Road which would allow for parking partly on the footway and not at all on the junctions and opposite the fire station access.
40. It appears that the existing recently constructed units are at least partially occupied and that the residents of the affordable units have not been given the benefit of the use of car parking spaces within the development. It was suggested that this is due to the Registered Social Landlord not having the capacity to provide car parking. I accept that the same could happen in relation to the appeal scheme. If this were to be the case, then undue pressure would be exerted on the availability of car parking spaces within the immediately surrounding roads, particularly if there was insufficient support for a CPZ to be implemented.
41. Taking account of the self-contained nature of the immediate area, I consider that it is unlikely that residents would seek to park within roads other than Orchard Road, Market Road and Garden Road. However, I consider that residents who do not have access to car parking within the development would be likely to park inconsiderately or injudiciously on the roads, even if regulations do not permit it. The likely levels of additional on street parking that would be generated could give rise to conditions which are unsafe to pedestrians, other road users and prevent free and safe access to business and services including the fire station. The significant failure to comply with the Council's normal standards in this case is unacceptable and contrary to the aims of Policy DM TP8. I do not foresee that this unacceptable effect would be reduced to an acceptable level by the inclusion of the units in a car club, as provided for in the undertaking.

***The need for and viability of infrastructure provision and viability of affordable housing***

42. The Council considers that the proposal should support affordable housing provision and contributions for local infrastructure. The appellant does not seek to argue that such measures are not justified as a matter of principle; it is however argued that the proposal would not be viable if affordable housing at the level suggested by the Council were to be provided and that the scheme could not support the provision of local infrastructure. The Council states that the proposal could support affordable housing at 44% of units and contributions for local infrastructure of £224,000 (and requires £215,897.97).
43. Policy CP15 of the CS seeks to achieve a 50% provision of affordable housing units for sites of over 10 units. Policy DM HO6 of the DMP states that the Council will seek the maximum reasonable amount of affordable housing, but will also take into account, amongst other things, economic viability and

- individual site costs. The appellant also points out that the provision of larger units is more costly than a greater number of smaller units.
44. In relation to the viability of the scheme and the assumptions and figures used, there is a general overall agreement, with the exception of 2 areas, namely the land funding cost and the build costs. In relation to the build costs, the disagreement essentially reduces down to the appellant using the actual costs which have been incurred in developing the Garden Road scheme and the Council assessing these as being high compared to standard costs. The Council indicates that the appellant's forecast of costs is 25% higher than the GLA toolkit benchmark and 38% above costs based on BCIS rates. The Council indicates that using the toolkit figures a saving of £1.1million would be made.
45. Based on the evidence before me I agree that the build costs set out by the appellant are high in relation to the standard costs referred to. Apart from stating that these are based on the costs of developing the neighbouring site, there appears to be no justification for the significant increase in costs as set out, and I am not convinced that the appellant could not undertake the development at costs more similar to those set out in the Council's assessment.
46. In relation to the land funding costs, the main difference arises from the augmentation of the Existing Use Value due to the uplift applied of 30%. The Council states that a reasonable uplift would be up to 25% in such a case, which is generally supported by other decisions which have accepted 15%-25%. Even though the appellant refers to an uplift of 30% being referred to in the GLA toolkit as "probably not unreasonable", there appears to be no justification for a figure which is at the upper end of such a scale and in reference to other decisions is excessive.
47. In relation to the land holding costs which have been included by the appellant, the Council points out that it is not normal to include such costs when determining viability of schemes from a time before planning permission is granted; such an approach is contrary to the guidance in the toolkit which assumes that land holding costs are calculated only from when planning permission is granted.
48. In all, I consider that it has not been demonstrated that the scheme could not support levels of affordable housing and infrastructure contributions more in line with the Council's figures. Therefore, the proposal is contrary to Policies CP 15, CP 16 and CP 18 of the CS, DM HO6 of the DMP and the Council's SPD in relation to this matter.

### **The Unilateral Undertaking**

49. The completed Undertaking makes provision for membership of a car club by future residents. I have referred to this above. The Undertaking also seeks to resolve the difference between the Council's desired number of affordable housing units and those currently contained in the scheme. As the Council points out, the overall offer has not increased but would rely on units funded by the HCA or by public subsidy through the Council's housing funds.
50. The Council were represented by a Housing Officer at the Hearing who confirmed that due to concerns over the nature of the proposal, it would be highly unlikely that public funds would be made available to support the scheme. It was confirmed that discussions with a Housing Association had included the above view being expressed by the Council.

51. In these circumstances, it seems unlikely that the measures set out in the Undertaking would result in the provision of an additional amount of affordable housing units.

**Conclusions**

52. I have taken careful account of all other matters in the representations and discussed at the Hearing. The proposal would bring about the provision of additional dwellings in an urban location, which is a positive aspect; however, this and the other matters wherein I find no unacceptable effects are outweighed by the negative aspects of the proposal, which I find overall to be unacceptable. Therefore, the appeal is dismissed.

*S T Wood*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr M Druce of Counsel	Cornerstone Barristers
Mr G Dowden	Indigo Planning
MA BA DipTP LLB MRTPI	
Mr M Breen	Savills
BA(Hons)	
Mr P Brookes	Paul Brookes Architects
BSc BArch RIBA ACARB	
Mr P Caneparo	TTP Consulting
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Mr P Fawell	Right of Light Consulting
BSc(Hons) MRICS	
Mr I Felgate	Paul Brookes Architects
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Mr C Ackley	Harepath Estates

### FOR THE LOCAL PLANNING AUTHORITY:

Mrs S Tamplin	Team Leader Appeals and Enforcement
DipTP PGDipArchCons MRTPI	
IHBC	
Mrs M Toffi	Principal Transport Planner
MTP AMICE	
Mr A Leahy	Bespoke Property Group
BSc	

### INTERESTED PERSONS:

Cllr S Speak	Borough Councillor
Cllr K Harborne	Borough Councillor
Cllr L Blakemore	Borough Councillor
Miss D Williams	Local resident
Ms T Roberts	Local Resident
Mr L Cowan	Local Resident
Miss A Holloway	Local Resident

## **DOCUMENTS**

- 1 Council's letter of notification of the Hearing and list of recipients
- 2 Unilateral Undertaking
- 3 Bundle submitted by Mr Leahy
- 4 Committee report for original scheme
- 5 Schedule of S106 contributions for previous appeal scheme
- 6 Proposed traffic order for Garden Road
- 7 Email response from the Council relating to the draft Undertaking