

PLANNING APPLICATION SUBJECT OF AN APPEAL

REPORT ON APPEAL DECISION

APPLICATION NO:	LTGDC-08-053-FUL
LOCATION:	Dovers Corner Industrial Estate, Rainham Trading Estate & Boomes Industrial Estate, New Road, Rainham, Essex RM13 8QT
PROPOSAL:	Full Planning Application for demolition and mixed use redevelopment comprising 95 houses and 634 apartments [729 dwellings], retail (A1 - A4) and commercial floorspace (B1 and D1) [8,780 sq m], car parking [627 spaces], public open space, de-culverting of Pooles Sewer, alterations to access to New Road, closure of accesses to New Road and Bridge Road, formation of emergency-only access to Lamson Road
APPLICANT:	Weston Homes Housing Ltd

1 Summary

- 1.1 Between 14th and 24th of September 2010, a public inquiry was held by the Planning Inspectorate to consider an appeal by Weston Homes Housing Ltd against the failure of the Corporation to determine the application to develop the Dovers Corner site for housing and commercial uses, as described above. The appeal was “recovered” by the Secretary of State for Communities and Local Government so that he, rather than the appointed Inspector made the final decision.
- 1.2 The Corporation’s position in the inquiry was that had the appeal against non-determination not been lodged, the application would have been approved, subject to the satisfactory completion of a Section 106 agreement and appropriate conditions. In the normal course of events, an appellant in this position would probably have withdrawn their appeal and re-submitted the application to the LPA. However, Weston Homes felt they had to continue with the appeal, as they would have lost their options to buy the land concerned from the current owners if they had done so.
- 1.3 The London Borough of Havering staunchly opposed the proposed development and considered that the appeal should be refused on the following bases:
- The amount, external appearance and prominence of the development in excess of three storeys and its failure to integrate visually and functionally with neighbouring areas
 - The failure of the development to reflect the Rainham Conservation Area or provide a positive relation with the River Ingrebourne
 - The access arrangements to New Road
 - The potential precedent that the scheme could create in the area.
- 1.4 On 18th of November 2010, the Inspector’s report was forwarded to the Secretary of State recommending that the appeal be allowed and planning permission be granted subject to conditions and the Section 106 legal agreement which had already been agreed between the parties subject to the appeal being allowed. The Secretary of State considered this report and on the 28th of January 2011 confirmed that he agreed with the Inspector’s recommendation.

2 Issues Considered in the Appeal Decision

2.1 In coming to his recommendation to the Secretary of State, the Inspector regarded the main issues to be:

- Land use principle
- Urban design and layout
- Impact on heritage assets
- Highway Safety
- Natural gas pipelines
- Other matters relating to viability and tenure.

3 Discussion

3.1 In coming to his conclusion and recommendation to the Secretary of State, the Inspector found in favour of the Corporation on all of the main issues listed above. The Secretary of State agreed with the Inspector's overall conclusions.

Land Use Principle

3.2 The Inspector considered that the principle of the development would accord with the thrust of the local and strategic policy framework for the area. However, the key policy consideration for the site was the Site Specific Allocation for the site, SSA12, and the development control policy on tall buildings DC66. In this respect, the Inspector placed particular emphasis on the reasoned justification for these policies.

3.3 The key area of disagreement on SSA12 was the sentence "*New buildings should be predominantly 3 storeys high*". The Corporation and LB Havering both agreed that this should be read in relation to individual sub-sites, however the Corporation argued that the 3 storey height exceedance on the site was justified whereas the Borough's view was that it was not. Weston Homes argument was that the height limitation applied to the whole of the SSA12 area and therefore could be averaged out over a wider area.

3.4 The Inspector's analysis of the language used in SSA12 led him to conclude that the height limitation applied to the whole of the allocation area. This was based on the consistency of language when applied to other areas of the policy, such as the 33% non-residential element and the range of land uses sought. As there was no specific reference to a particular part of the site with respect to height, it was the Inspector's view that the reference must refer to the whole of the site allocation. In this context, the policy does not require that each and every sub-site be developed to predominantly three storeys in height and there is nothing in the Site Specific Allocation Examination Report that would indicate a contrary view. Importantly, it was noted that it is Havering's stated intention to produce a SPD to include detailed design guidelines however since this SPD process has not been initiated since the adoption of the SSA document, the Inspector's view was that Weston Homes' approach to the development is not an unreasonable approach to take.

3.5 The Inspector noted that the root of the local representations against the development was a perception that larger developments would lead to social issues as was seen in the high rise blocks in the Mardyke Estate. However, although Havering indicated that the resident's concerns were carried forward into the development plan, the social concerns of residents were not carried forward nor did it play a part in Havering's evidence. The Inspector noted that the reasoned justification of the policy is to "*...ensure the development is integrated visually and functionally with the existing communities of South Hornchurch and Rainham*". The Inspector concluded that if the development could demonstrate that it meets this objective, then it could be reasonably

expected that this part of the policy would be satisfied. On this basis, the social based concerns raised by residents do not fall to be considered in the context of SSA12.

3.6 Policy DC66 was the key policy in establishing whether the height of the buildings would be acceptable at this location. The policy is set out in such a way as to specify that buildings of six storeys or greater will normally only be permitted in the Romford Town Centre, but “In exceptional circumstances” will be permitted outside Romford Town Centre provided they accord with bulleted criteria set out in the policy. It was the case of the Corporation that the “exceptional circumstances” would be established if the criteria set out in the bullet points were satisfied. Havering’s arguments was that first the bulleted criteria would have to be satisfied and secondly the exceptional circumstances would need to be demonstrated. The Inspector took the view that the policy and its reasoned justification were vaguely worded. In his view, the policy could be read as suggested by either party. Therefore, the Inspector deemed it necessary to establish whether there was strategic support for Havering’s approach in the London Plan, specifically turning to policy 4B.9. This indicates that the Mayor will “...*promote the development of tall buildings where they create attractive landmarks enhancing London’s character, ...and/or act as a catalyst for regeneration and where they are also acceptable in terms of design and impact on their surroundings. Boroughs may wish to identify defined areas of specific character that could be sensitive to tall buildings within their DPDs. In doing so, they should clearly explain what aspects of local character could be affected and why*”. From this, the Inspector concluded that while the strategic policy provides for locally set thresholds for tall buildings, this is not supported in policy DC66 or Havering’s approach to its application. In this context, the Inspector favoured the Corporation’s case.

Urban Design and Layout

- 3.7 The accepted starting point for the design considerations was the surrounding urban context. From this, the Inspector considered that the character of the area is very diverse with no consistent architectural style. Dovers Corner was considered to be physically divorced and visually isolated from the urban context of Rainham Village and the suburban residential development to the north by substantial highway infrastructure. The Inspector acknowledged that the GLA had consistently recognised that the site is removed from the existing district centre and that CABE considers the quantum, form and mass of the development could be appropriate.
- 3.8 The approach to layout was considered to be consistent with the objectives of SSA12. The Inspector considered that the approach of perimeter and courtyard blocks resulted in well defined and overlooked streets which are supported by the GLA and CABE.
- 3.9 Density was not considered to be an issue between the parties per-se. Whilst there was disagreement on how the density was calculated, either figure fell within the London Plan density matrix and the range stipulated in SSA12. In any event, the Inspector considered that the strategy for Opportunity Areas should be to maximise new jobs and homes and that development should seek to go beyond minimum guidelines for housing. Therefore, the Inspector concluded that there was conflict with policy on density.
- 3.10 Havering highlighted specific concerns in its evidence relating to the linear blocks along New Road and the eastern boundary of the site. The concern was centred on SSA12 where it states that the eastern end of the site must “reflect” the Rainham Conservation area and that development along New Road must “embrace” the road frontage. These matters were considered to relate to functional and visual integration of the site with the surrounding area.
- 3.11 The Corporation’s case in this regard was that the perimeter blocks were of an appropriate scale given the surrounding context. When considering the width of the surrounding roads and their wide verges, the ‘enclosure ratio’ of the buildings needed to be higher, i.e. taller buildings are needed to frame these wider roads. Additionally, the design approach taken to Buildings B1 and

B2 at the eastern end of the site is sensitive to the Conservation Area, being of brick construction and traditional design features.

- 3.12 The Inspector agreed with the Corporation's approach to the development, stating that the height of the building should relate to the width of the street. It was the Inspector's view that the scale of the existing highway infrastructure was "...*massive with substantial gaps to existing development to the north and east*". On this basis, the Inspector considered that there are sound urban design reasons why taller buildings would be appropriate on the northern and eastern edges of the site. Additionally, the design and finish of Buildings B1 and B2 was considered to provide a sensitive setting to the creek. The Inspector went on to conclude that predominantly three storey development would be completely lost at these locations.
- 3.13 A particular criticism of both Havering and CABE was that the development would be inward looking, turning its back on the surrounding area. The Inspector acknowledged that the buildings along the northern edge of the site have few living rooms facing New Road, however given the significant set back from the road and the degree of existing screening, the appearance of these buildings would not be unacceptable. Further, given the limited visual impact, the Inspector considered that it would be counter-intuitive to place the bulk of living rooms in the north facing elevation thus losing the value of solar gain. The Inspector also did not consider that the buildings on the eastern side of the site would be inward looking given the number of living rooms and balconies facing east over the creek toward Rainham Village and coupled with the pedestrian walkways activating the eastern edge of the site.
- 3.14 In terms of functional integration, the Inspector considered that the scheme presents an "...*attractive boulevard linking the creek side park to the [proposed] College Campus*". The criticism levelled by Havering at Weston Homes for not providing for a bridge crossing of the creek was not supported by the Inspector, as Havering has not produced any detailed guidance on how this area should be developed. The boulevard link to the west is also considered to provide a firm basis for the detailed design of the College Campus and ultimately provide for a "...*legible form of development with attractive, usable links to the east and the village*". Furthermore, Havering's criticism of the linkages into and out of the site was considered misplaced. It was the view of the Inspector that the linkages through the site were just as legible as those suggested by Havering.
- 3.15 The location of the tallest buildings in the north eastern and south eastern corners of the site was also considered to be appropriate by the Inspector. This conclusion was based on Havering's LDF policy DC66 and the London Plan. The Inspector noted that given their location, scale and nature, the Dovers Corner roundabout in the north and the approach from the A13 via Lamson Road in the south are key gateways to Rainham. The degree of openness around these sites meant that buildings of 9 and 10 storey would not be out of place. Also, the graduation in height along New Road and Bridge Road would provide attractive vistas and pleasing graduation in scale. The variations in height and design were considered by the Inspector to provide visual interest thereby avoiding the tendency for groups of taller buildings to have a dominating slab-like appearance. The Inspector concluded by stating that he considered there to be clear reasons for taller buildings in these locations.
- 3.16 Overall, the Inspector considered that the scheme would not set an undesirable precedent in terms of either the design of the buildings or the layout of the site. It was considered that the scheme does not conflict with the objectives of SSA12 or DC66, or the relevant policies contained within the London Plan.

Impact on Heritage Assets

- 3.17 The Inspector acknowledged that Rainham Village has retained a distinctive identity and mentioned that he can fully understand why local residents are very proud and protective of its character and appearance. In his view, there were two factors that contribute to the Village's

distinctiveness. These are firstly the clear physical separation of the Conservation Area from surrounding development; and secondly the largely closed and inward looking form. The Inspector found it important to note that the adopted character appraisal of the Conservation Area does not identify any key views from the development site to the Village.

- 3.18 The Inspector visited the site and the surrounding area on no less than three separate occasions. The first was unaccompanied, the second accompanied on the first day of the Inquiry and the third accompanied on the last day of the Inquiry. From these site visits and on the evidence presented, the Inspector concluded that any views into the Conservation Area from the west or out to the west are severely restricted by the alignment of the road and the pinch points between the two public houses. All other views are completely screened by the Tesco superstore, petrol filling station and landscaping around this part of Rainham. The Inspector considered that any views into the Conservation Area are very limited and there is no appreciation of the character or the significance of any designated heritage assets. Although the buildings on the eastern perimeter of the site would be prominent, the scheme was not considered to have an adverse effect on the significance of the Conservation Area or its setting when having regard to these definitions within PPS5.
- 3.19 The Inspector also noted that the only buildings visible from within the Conservation Area, Buildings B1 and B2, would be visible only through restricted and framed views. Additionally, the material palette proposed to be used taken together with the distance from the village were considered to acceptably mitigate any impact that these buildings could potentially have had.
- 3.20 Havering's evidence also argued that the tallest buildings located in the north eastern and south eastern corners of the site would be in direct competition with the heritage buildings within the Conservation Area, especially the three public houses which act as landmarks for the entrance to the Village. The Inspector pointed out that the permitted Rainham Library scheme at 5 storeys is within the Conservation Area and is adjacent to the Phoenix public house, yet Havering did not object to this proposal. Even if the library scheme were not permitted, the taller elements of Dovers Corner would be largely unobserved from within the Conservation Area and there would be no sense of competition or unacceptable impact on the existing historic landmark structures.
- 3.21 Using this same assessment, the Inspector concluded that the development would have no adverse impact upon the Grade I, II* and II Listed Buildings or the Locally Listed Buildings in the Village. The National Trust expressed particular concern in this regard and specifically toward the impact on Rainham Hall. The Inspector was satisfied from his accompanied site visit that there would be no views of the development from the grounds of Rainham Hall and very limited views from the south western upper storey window. The restricted views would be through mature planting and would take "*some effort to obtain*". On this basis, the development was considered to have no impact whatsoever on Rainham Hall.

Highway Safety

- 3.22 The debate surrounding highway safety was centred on the proposed access from New Road as a ghost island junction comprising an at-grade T-junction with areas marked on each carriageway to direct traffic movement. Havering's case sought a dedicated signalised junction whereas Weston Homes considered that the junction as described was sufficient. The Corporation had taken advice during the planning application and considered that the junction as proposed was sufficiently safe, but had secured further modelling and safety audits through the S106 agreement. On this basis, the debate was largely between Weston Homes and the Borough.
- 3.23 It was agreed between all parties that the basis for the junction design would stem from the *Design Manual for Roads and Bridges Part 6 TD 42/95*. This is not a mandatory design manual but it was considered the best guidance on examining the form of major and minor priority junctions. Based on the predicted vehicle flows for the development, the Manual suggested the

junction be a roundabout or other type of junction. The Inspector considered that, although a particular type of junction was suggested by the manual, as long as the junction can be shown to operate safely, there would be no reason, in principle, why a different type of junction would not be suitable. In the case of the appeal development, considerable emphasis was placed on the Road Safety Audit (RSA) submitted with the application and the views of the consultants who reviewed the RSA on behalf of the Corporation.

3.24 Havering's specific concern was that the occupants of vehicles turning right out of the development would be at significant risk of injury due to frustration at having to wait and the type of manoeuvre required by drivers to leave the site. Havering believe that these concerns were evidenced in the RSA and the Corporation's review in that both sets of auditors point out that there will be a considerable increase in vehicle movements and some uncertainty over safety. Havering contended that any major changes to the junction should not be left to the safety audits required in the S106.

3.25 The Inspector considered that the comments relating to increased numbers of vehicle movements and safety should not be read in isolation. In many different parts of the RSA review, it was identified that the purpose of the RSA is to identify problems that may affect highway users and to suggest measures to eliminate or mitigate those problems. At no point did the auditors identify a fundamental flaw with the choice of junction and it would be their professional obligation to state this had the junction not been fit for purpose. Both auditors suggested that should any potential problems occur, they could be acceptably mitigated during the later stages of the RSA. It was this interpretation that led the Corporation to require the relevant clause within the S106 agreement and the Inspector acknowledged this provision.

3.26 Based on the evidence provided, the Inspector concluded that the junction would work well in capacity terms with very limited queues at peak times. Therefore, the likelihood of accidents attributed to frustration or manoeuvre was considered to be low and that the choice of junction is acceptable.

Natural Gas Pipelines

3.27 The location of three Major Accident Hazard Pipelines in the area triggered an 'advise against development' response to the application from the Health and Safety Executive (HSE) through its PADHI consultation system. The HSE also provided a written submission to the Inquiry but did not appear at the Inquiry either to give evidence or to cross examine witnesses.

3.28 Weston Homes commissioned a consultant to carry out an assessment of the risk presented by the pipelines which concluded that the when applying the PADHI rules and with updated pipeline information, the consultation response would be 'Do Not Advise Against'.

3.29 As Weston Homes assessment was not challenged by the HSE and after careful reading of the PADHI document, the Inspector concluded that the presence of the pipelines would not be a reason to dismiss the appeal.

Other Matters

3.30 Although part of Havering's case related to scheme viability, neither Weston Homes nor the Corporation chose to produce any evidence in this regard. It was the Corporation's case that the scheme should be assessed on its own merits and not on whether the scheme is financially viable. The Inspector agreed with this view, commenting that viability does not form part of LDF policy and accordingly that this is an issue that need not be addressed.

3.31 The number, mix and tenure of the housing provided was considered to make a positive contribution to strategic and local housing targets and was considered to be broadly in line with

LDF policy and PPS3.

3.32 The scheme was considered to be in a highly sustainable location given the adjoining district centre and that the development is within 400m of a railway station. The minimum Code for Sustainable Homes level 3, access to district heating, cycle parking and Lifetime Homes Standards all played in the scheme's favour.

3.33 The type and quantum of commercial development was considered to be consistent with PPS4. There was some suggestion from local residents that the commercial offer would have an adverse impact on the vitality and viability of the Rainham District Centre. However the Inspector concluded that, given the scale or the proposed development, its relationship to the district centre and the location of the railway station, the development has the potential to significantly increase the footfall through the centre.

4 Conclusion and Implications

4.1 The Inspector's report was significant in that it found in favour of all the arguments put forward by the Corporation. Apart from one point regarding the interpretation of policy DC66, the Inspector did not indicate that Havering's argument carried any weight or merit. The recommendation to the Secretary of State therefore gave little room for an alternative opinion on the balance of material consideration.

4.2 The Secretary of State (SoS) agreed with the Inspector's overall recommendation, but provided caveats for this decision. In commenting on the urban design and layout, the SoS accepted that a building of height should be scaled appropriately in relation to the surrounding highway infrastructure and that the presence of the Dovers Corner roundabout and other topographical features assist in justifying the scale. However, the SoS stated that he did not support the broader suggestion that there are sound urban design reasons for taller buildings in open areas or that three storey development would necessarily be lost in such an environment. Nevertheless, the SoS agreed with the Inspector's conclusion that the proposal would not conflict with the development plan in this respect.

4.3 Importantly, both the Inspector and the SoS found that the S106 agreement accords with Regulation 122 of the Community Infrastructure Levy Regulations. Specifically, the Inspector noted that the agreement meets the three key tests being; the obligations are necessary to make the development acceptable in planning terms; directly relate to the proposed development and are fairly and reasonably related in scale and kind to the proposed development. This decision therefore provides endorsement from the SoS that the Corporation's method of securing legal obligations is sound, including the financial contribution arrangements.

4.4 It is understood that Weston Homes intend to start development at the earliest opportunity. Discussions are underway with regard to pre-commencement condition however it is likely that the Corporation will have no further dealings with this scheme given the lifetime of its planning functions in this area.

4.5 The London Borough of Havering have stated publicly that they will "be looking in detail at the decision to see if legal action may be justified". Any such action would be against the Secretary of State. Again, given that the Corporation's planning functions are shortly to come to an end, no purpose would be served by the Corporation becoming an interested party in any such proceedings.

Recommendation

5.1 The Committee are asked to **NOTE** the report.

CASE OFFICER: Stephen Allen

DATE: 28/02/2011
