The Planning Inspectorate

Appeal Decision

Inquiry held between 7-10 and 14-16 December 2021

Site visit made on 16 December 2021

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th January 2022

Appeal Ref: APP/R5510/W/21/3279371
217 High Street, Yiewsley, West Drayton UB7 7GN

- 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 Taylor Wimpey West London against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 68663/APP/2020/705, dated 28 February 2020, was refused by notice dated 29 March 2021.
- The development proposed is the erection of 5 and 6 storey buildings to provide a health facility (approximately 10,000sqft) (Use Class E) and 233 residential apartments with associated parking, communal podium garden, landscaping, pedestrian and cycle canal link and external works following the demolition of the existing buildings.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Prior to the Inquiry the main parties reached agreement over the contributions needed for the improvement of services and facilities as a consequence of demands arising from the development, and also to meet policy requirements such as the provision of affordable housing. The contributions have been secured through a legal undertaking. The undertaking includes an obligation which would ensure provision of the health centre as part of the development. The agreement reached over the wording of this latter obligation overcomes one of the main issues identified at an earlier stage in the appeal. I comment further on the legal undertaking under other matters.

3. There is a minor irregularity in the completed undertaking it in that one of the signatories has signed on the wrong page. Given my overall conclusion I have not sought to delay a decision unnecessarily by waiting for this irregularity to be corrected. I have taken the obligations in the undertaking into account in reaching my decision.

Main Issue

4. The main issue in this appeal is whether the health centre could be provided on a sequentially preferable site in relation to flood risk.

5. It is also necessary to consider the planning benefits offered by the proposal. I consider these as part of the planning balance.

Reasons

Flood risk

6. The majority of the site lies within Flood Zone 2 as defined on the Environment Agency's Flood Map for Planning (Rivers and Sea). A small part adjacent to the River Pinn lies within Flood Zone 3a although the proposed scheme has been designed to avoid any habitable development within this zone. Other small parts around the periphery of the site fall within Flood Zone 1. For the purposes of assessing fluvial flood risk, I consider the development to fall within Flood Zone 2, defined as being of medium probability of flooding[1].

7. Parts of the site are at risk from surface water flooding, although this could be adequately addressed through improvements to drainage and on-site storage. The site also adjoins the Grand Union Canal. The water level in the canal is higher than the appeal site but the risk of a breach is very low. The same applies to the very low risk of flooding from a reservoir breach. Taking account of all sources of flood risk, I consider the development would be at a medium risk of flooding.

8. Policy SI 12 of the London Plan 2021, Policy EM6 of the Hillingdon Local Plan Part 1 – Strategic Policies 2012 ('Local Plan Part 1') and Policy DMEI 9 of the Hillingdon Local Plan Part 2 – Development Management Policies 2020 ('Local Plan Part 2') all seek to minimise the risk of flooding of new development. Only where no other appropriate sites are available will sites at a higher risk of flooding be considered, subject to suitable mitigation.

9. These policies are consistent with national planning policy on flood risk[2] as set out in the National Planning Policy Framework (the 'Framework') which requires the application of a sequential test, the aim of which is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

10. The Council has an adequate supply of housing land either permitted or allocated to meet its plan requirements, and its development plan is up-to-date and has been the subject of a strategic flood risk assessment. Taking the residential element alone, there are reasonably available sites for residential development in areas that have been sequentially tested and found to be preferable to the appeal site.

11. However, the appeal proposal is predicated on the residential element acting as enabling development to fund the construction of the health centre and subsidise its rent for the first 15 years. Following agreement reached shortly before the start of the Inquiry, the Council does now accept that implementation of the appeal scheme can be made dependent on delivery of the health centre. In so far as the sequential test is concerned for this appeal, I have therefore taken the development as a whole but with my attention focused on the need for the health centre and whether there are reasonably available sites that could accommodate it in areas with a lower risk of flooding than the appeal site.

[1] National Planning Practice Guidance, ID: 7-065-20140306
[2] National Planning Policy Framework, paragraphs 159-169

Need for a health centre

12. It is common ground between the main parties that there is a need for a new health centre in Yiewsley. This is as the result of deficiencies in the quality of accommodation currently provided in the existing health centre[3], space to accommodate additional medical services that are intended to be provided as part of primary care provision, and increased demand from the growing population. Medical services are planned as part of a wider primary care network but that does not obviate the need for them to be delivered locally in Yiewsley, which defines the area of search for the sequential test in this case.

13. There is a difference of opinion between the main parties as to the urgency for a new health centre in Yiewsley, with the appellant arguing that provision needs to be made as soon as possible, and the Council arguing that new provision is not so urgent that it overcomes the harm caused by placing new development at risk from flooding. I consider the urgency of providing a new health centre in Yiewsley in more detail in the planning balance, but for the purposes of assessing the sequential test I acknowledge that there is a need for a new and enlarged health centre to meet the primary health care needs of the population in Yiewsley.

Alternative sites

14. The Council has identified 2 alternative sites that it considers meet the sequential test. These sites are land off Trout Road, Yiewsley and the existing health centre at 20 High Street, Yiewsley. I consider each of these sites in turn.

Trout Road

15. Land off Trout Road is a brownfield site adjacent to Yiewsley town centre and with a partial frontage on to the High Street. The site is allocated in the Local Plan[4] and has previously had planning permission for redevelopment with a mixed use scheme[5]. Although the permitted scheme has not been implemented the majority landowner has indicated a continued intention to redevelop the site, including pre-application discussions in 2021 with both the Council and National Health Service, and confirmation that a medical centre could be part of such a scheme[6].

16. The Council has also carried out a capacity study[7] that indicates that the site has development potential for a mixed use scheme including a medical centre and up to approximately 340 residential units. While this level of development would be significantly greater than either that shown in the Local Plan allocation or previously granted on the site, it would be consistent with the design-led approach to optimising development opportunities adopted in the London Plan 2021.

17. The appellant has criticised the design proposals arising from the capacity study in terms of the ability for the site to accommodate a health centre in the desired format, parking provision, building heights, limitations arising from differences in land ownership, and the relation with surrounding buildings and uses. While there is some substance to all these criticisms the design proposals

[3] Yiewsley Health Centre, 20 High Street, Yiewsley
[4] Hillingdon Local Plan Part 2: site SA39
[5] 38058/APP/20131756
[6] Letter from Troutbourne LLP dated 27 October 2021
[7] LB Hillingdon Trout Road Capacity Study, November 2021

are at a very early stage and are likely to be subject to negotiation and change before a final scheme emerges. In my view none of the shortcomings highlighted in the current design proposals are such that they would preclude a scheme coming forward on the site that could include a health centre of the size proposed on the appeal site, albeit it may be over more than one floor with more remote parking. Neither of those aspects in my view would prevent a health centre from operating satisfactorily.

18. The Local Plan allocation for Trout Road does not require a health centre to be provided on the site although policies relating to the provision of infrastructure would be relevant in determining any subsequent application. It would therefore be a matter of negotiation as to the inclusion of a health centre in any scheme and the degree of cross funding that may be necessary or appropriate. That means provision of a health centre on the site is less certain than that proposed on the appeal site, where terms have been agreed. Nonetheless, viability assessments provided to the Inquiry broadly indicate that a scheme of approximately 288 units[8] or 300 units[9] would be sufficient to provide the same level of subsidy as proposed on the appeal site. The capacity study carried out by the Council indicates that such a scheme is likely to be achievable on the Trout Road site.

19. The site lies within Flood Zone 1 and therefore has a lower risk of fluvial flooding than the appeal site. It does suffer from a greater degree of surface water flood risk than the appeal site, but that could be suitably addressed through drainage and on-site storage, as was accepted in the previous grant of planning permission. The site adjoins the Grand Union Canal but as the likelihood of a canal breach is very low the risk of flooding from this source is also very low, as is that from a reservoir breach. The site has been subject of a sequential test due to its allocation in the Local Plan and was found to be acceptable. Having regard to all sources of flood risk, I consider the Trout Road site to be at a lower risk of flooding than the appeal site.

20. Taking all these matters into account, I conclude that the Trout Road site is reasonably available, could accommodate a health centre of an appropriate size with ancillary parking, and is at lower risk of flooding than the appeal site. Cross funding would be a matter for negotiation, which inevitably introduces an element of uncertainty when compared to the appeal scheme, but I am satisfied that development of a size sufficient to provide a similar level of subsidy if required. The Trout Road site is therefore sequentially preferable to the appeal site in terms of minimising flood risk to new development.

20 High Street

21. The existing health centre occupies a town centre location towards one end of the High Street. It is owned by National Health Service Property Services and is therefore reasonably available for primary health care provision. It lies within Flood Zone 1 with no other identified sources of flood risk. It is therefore at a lower risk of flooding than the appeal site.

22. The main obstacles to redevelopment of a larger health centre on the existing health centre site are viability and the continued provision of primary health care services during the construction period.

[8] Proof of evidence of James Brierley, appendix xxi (Trout Road Test 6 Appraisal)
[9] Proof of evidence of Anthony Lee, appendix 4

23. Viability assessments on behalf of both main parties were based on a feasibility study[10] for a mixed use redevelopment of the site to include a larger health centre, 32 residential apartments and ancillary parking. Based on a nil land value and no affordable housing provision, the Council's assessment indicates a viable scheme with a surplus of £0.67m[11], while the appellant's assessment indicates it would not be viable, with a deficit of -£1.1m[12]. The difference between these assessments includes variations in assumptions on rental income, development costs and sales values.

24. Based on the evidence submitted and what I heard at the Inquiry, it appears to me that the Council's assumptions are somewhat optimistic and therefore it is likely that the viability of the scheme shown in the feasibility study would be only marginally viable or show a deficit. The Council argues that any deficit in viability could be made up by subsidy from accrued infrastructure funding earmarked to support provision of health care in the Borough. This is at present of the order of £1.2m and therefore of sufficient size to address any likely deficit that may arise. There would also be longer term benefits of the centre remaining on land within the ownership of the National Health Service, with internal control over future lease and rental arrangements.

25. Redevelopment of the existing health centre would require its health care services to decant to another location for a period estimated to be up to 2 years. A cost of £1m is included in the viability appraisals in recognition of this requirement. No decant site or premises have been identified although that would be a matter that would have to be addressed nearer the time if such a scheme were to be implemented. The Council notes that temporary accommodation for health care services has been provided at other sites using portable buildings[13]. There would be considerable challenges to overcome in decanting health care services for a temporary period, but I do not consider it would be unachievable.

26. Redevelopment of the health centre without including any element of affordable housing would require justification on viability grounds and is therefore a matter that could only be determined as part of a detailed proposal. The same would apply to the use of infrastructure funding to bridge any residual deficit in viability. Nevertheless, given that the Council recognises the need for an improved health centre in Yiewsley, and development of such a centre on the site of the existing health centre would meet that need, I consider those to be realistic assumptions. Whether subsidy is secured through cross funding, as proposed in the appeal scheme, or partly through using infrastructure funding, as suggested by the Council, is secondary to achieving the desired outcome of a new health centre.

27. Notwithstanding the challenges around viability and the temporary decanting of services, I conclude that redevelopment of 20 High Street to include a new health centre would in principle be achievable. It would therefore be sequentially preferable to the appeal site in terms of minimising flood risk to new development.

[10] Assael - Yiewsley Health Centre, Hillingdon Feasibility Study, August 2020
[11] Proof of evidence of Anthony Lee, paragraph 6.9
[12] Proof of evidence of James Brierley, paragraph 6.14
[13] Proof of evidence of Ian Thynne, paragraph 119

Other Matters

28. Opposite the site lie 2 grade II listed buildings: Yiewsley Grange, originally a house of late C16 or early C17 later refronted and now used as a school; and a timber framed barn in Philpots Close of similar age to The Grange, converted to offices. The significance of these heritage assets lies in their historical interest as early surviving buildings of the area prior to its subsequent post-industrial growth.

29. The listed buildings are separated both functionally and visually from the appeal site by the High Street, which is a dual carriageway at this point. The new buildings would replace what is currently an open parking area with a modern retail warehouse building and motor repair works beyond. While the proposed development would be clearly visible from the listed buildings, it would not in my view impinge harmfully on their settings. I consider the effect of the proposed development on the heritage assets to be neutral. No harm would therefore be caused to their historic significance.

30. The Grand Union Canal is a non-designated heritage asset. The rear part of the development would run adjacent to the canal but would not adversely affect its function, historical significance or amenity.

31. The legal undertaking that has been agreed would secure 79 of the units as affordable housing as well as contributions towards local bus services, air quality improvement, carbon offset, construction training, an active travel zone, a cycle and footpath link to the canal tow path, controls over parking permits, a travel plan, support for a car club, and ensuring provision of the health centre as part of the development.

32. The main parties consider these planning obligations satisfactorily address the matters contained in the Council's second reason for refusal. Having considered them during a round table discussion as part of the Inquiry, I am satisfied that these obligations meet the requirements of Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) in addressing the additional demands placed on infrastructure and public facilities arising from the development, and policy requirements such as that relating to affordable housing. In so far as they achieve those aims, I consider them to be necessary, directly related to the development and fairly and reasonably related in scale and kind. I have taken these obligations into account in reaching my decision.

Planning Balance

Sequential test

33. Having regard to the conclusions I have reached above, I consider that the proposed development conflicts with Policy SI 12 of the London Plan 2021, Policy EM6 of the Local Plan Part 1 and Policy DMEI 9 of the Local Plan Part 2, which seek to manage flood risk by minimising new development at risk from flooding. It also fails the sequential test as set out in paragraph 162 of the Framework because there are reasonably available sites appropriate for a health centre of the size proposed in the appeal scheme, with ancillary parking, that are in areas at lower risk of flooding. The Framework is clear that development should not be permitted where the sequential test is failed, notwithstanding that there may be opportunities to mitigate the risk to future

occupants and uses through other means. I place very significant weight on the failure to meet the sequential test.

Benefits

34. Balanced against this harm are a range of benefits that would accrue from the proposed development. The most important would be the provision of a new health centre of a size suitable to meet current and future primary health care needs in Yiewsley, offered at no capital cost and with a subsidised rent for the first 15 years of a 25 year lease. The health centre has the support of the Clinical Commissioning Group[14] and local primary health care practices[15], who are satisfied that it would meet their requirements and have agreed the terms offered by the appellant. The provision of new or improved community infrastructure is supported by Policy GG3 of the London Plan 2021, Policy CI 1 of the Local Plan Part 1 and Policy DMCI 2 of the Local Plan Part 2 and I give it significant weight.

35. Also of significant benefit would be the provision of 79 units of affordable housing. The need for affordable housing is particularly pressing in London and the proposed development would make an important contribution to meeting that need. The provision of affordable housing is compliant with and supported by Policy H4 of the London Plan 2021.

36. Other aspects are of more moderate weight but nevertheless of planning benefit. The provision of 233 residential units (including the affordable housing) is of benefit notwithstanding that the Council is able to demonstrate an adequate supply of housing land, given the demand for housing in the area and wider afield in London. The bulk and height of buildings proposed would result in a much more prominent development on the site when compared to the existing commercial buildings, which are set back from the road frontage. However, the design quality of the proposed buildings and their landscaped setting would result in a moderate improvement to the appearance of the area. The legal undertaking would also secure benefits to the maintenance and improvement of the Grand Union Canal tow path, and access to it.

37. Other obligations secured through the legal undertaking, and more indirect matters relating to wider social and economic impacts are of more limited benefit or neutral in the planning balance in that they are required to address additional demands on public services arising from the development itself or would accrue from similar development already planned in the area.

Urgency for new health centre

38. Evidence submitted on behalf of the appellant details the limitations of the existing health centre building in terms of lack of compliance with current standards and inadequate capacity for future growth, and how these limitations were exposed during the Covid pandemic[16]. If permitted, implementation of the scheme could see the health centre operational by the end of 2024.

39. Conversely, other than a site search in 2007 I have no evidence that the Clinical Commissioning Group (or its predecessors) has made any active

[14] North West London Clinical Commissioning Group, letter dated 1 November 2021
[15] The High Street Practice and Yiewsley Family Practice, letters dated 6 December 2021
[16] Proof of evidence of Robert James, and email clarification of operation of Yiewsley Health Centre during Covid pandemic 10 December 2021

attempt since at finding a site itself. There have been ongoing discussions between the Clinical Commissioning Group and the Council, who has progressed at least one site to permission stage but which was not then implemented[17]. There has also been a recent refurbishment of the existing medical centre supported by infrastructure funding. While I accept that the refurbishment is not a long term solution for local primary health care needs it has extended the life of the centre.

40. The evidence presented at the Inquiry demonstrates that there are reasonably available sites in Yiewsley which could accommodate an improved health centre. Development of these sites would take longer than the appeal site because their detailed planning is not as advanced as that undertaken by the appellant. However, it is reasonable to assume that they would come forward in due course.

41. That there is a need for a larger and better health centre is accepted by all parties. The support for the appeal scheme by the Clinical Commissioning Group and local primary care practices is understandable given the significant benefits that are being offered by the appellant. However, I am not persuaded on the evidence before me that the urgency for such a health centre is so great that it overrides the important planning objective of minimising the risk of flooding to new development. In doing so I have had regard to the public sector equality duty under Section 149 of the Equality Act 2010 and in particular those disabled people who may find accessing primary health care services more difficult as a result of the existing health centre's limitations.

Conclusion

42. Policies in the development plan conflict with and support different aspects of the appeal proposal. I consider those relating to flood risk avoidance to carry the greatest weight in this case. I conclude that the appeal proposal would conflict with the development plan when taken as a whole.

43. The provision of a new health centre and 79 units of affordable housing are important material considerations that weigh significantly in favour of the scheme. The provision of market housing is of moderate benefit as would be the contribution of the scheme to improving the character and appearance of the area, and access to and improvement of the Grand Union Canal tow path.

44. Weighing these matters together and having regard to my conclusion on the urgency of need for a new health centre, I consider that the benefits of the proposal, significant though some of them are, do not outweigh the failure to meet the sequential test and the harm that would result from placing new development at risk of flooding.

45. Accordingly, I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR

[17] 8344/APP/20133564 Former Yiewsley swimming pool site and part Fairfield car park, Otterfield Road, Yiewsley

APPEARANCES

FOR THE APPELLANT:

Morag Ellis QC, of Counsel, assisted by Flora Curtis, who called:

Paul Jenkin	Director of Water Management, Stantec
James Brierley	Partner, Gerald Eve
Steven Butterworth	Senior Director, Lichfields
Robert James	Development Team Manager, Assura plc

Present at round table discussion on legal undertaking:

Haroon Kahn	Planning Lawyer, Gateley Legal

FOR THE COUNCIL:

Isabella Tafur, of Counsel, who called:

Ian Thynne	Planning Specialist Services Manager, London Borough of Hillingdon
Anthony Lee	Senior Director, BNP Paribas Real Estate
Laura Ashton	Director, LAUK Planning Limited

Present at round table discussions on legal undertaking and conditions from London Borough of Hillingdon:

Nicole Cameron	Principal Lawyer
Julia Johnston	Interim Head of Strategic Infrastructure
Mandip Malhotra	Strategic and Major Applications Manager
Tom Campbell	Planning Policy Team Leader

INTERESTED PARTY

Katherine Newns	Local resident

DOCUMENTS

Received during or after the Inquiry

1. Opening submissions for appellant.
2. Opening submissions for Council.
3. Flood Risk Statement of Common Ground.
4. Schedule of appearances and qualifications for the appellant's witnesses.
5. Draft schedule of conditions.
6. Appendices to Anthony Lee's proof of evidence.
7. R (on the application of Khodari) v RLB Kensington & Chelsea and Cedarpark Holdings Ltd [2017] EWCA Civ 333.
8. Flood Map showing location of 16 Moorfield Road, Yiewsley.
9. Planning Statement of Common Ground.
10. Appendix to Ian Thynne's proof of evidence: Strategic Flood Risk Assessment 2015, Site Allocations review.

11. Appendix to Ian Thynne's proof of evidence: Draft Site Search, LB Hillingdon, BNP Paribas Real Estate, 16 October 2021.
12. Instructions to BNP Paribas Real Estate from LB Hillingdon for Draft Site Search.
13. Land Registry title plans for parcels of land at Trout Road, Yiewsley.
14. Land ownership map, Trout Road, Yiewsley.
15. Link to West London Strategic Flood Risk Assessment.
16. Representation from Deborah King, local resident.
17. Representation from Ray Roberts, local resident.
18. Clarification on operation of Yiewsley Health Centre during Covid pandemic.
19. Instructions for Draft Site Search pursuant to appendix to Ian Thynne's proof of evidence.
20. Revised draft legal undertaking.
21. Revised schedule of conditions and commentary.
22. Trout Road Capacity Study concept proposals superimposed onto land ownership map.
23. Clarification of timeline for production of Trout Road Capacity Study.
24. Planning status of Al Falah Islamic Centre with associated decisions.
25. Closing submissions for Council.
26. Closing submissions for appellant.
27. Completed legal undertaking.
28. Email re: slight irregularity to legal undertaking.