



Havering
LONDON BOROUGH

Strategic Planning Committee

21 December 2021

Application Reference:

P0851.20

Location:

The Verve Apartments, Mercury Gardens,
Romford

Ward:

Romford Town

Description:

Variation of condition No. 2 (parking) of
planning permission J0026.15 dated
28/10/15 to allow a reduction in parking
spaces to 27 (Change of Use from (Class
B1 (a)) to residential use (Class C3) for 115
proposed new flats (Prior Approval)

Case Officer:

Habib Neshat

Reason for Report to Committee:

A Councillor call-in has been received which
accords with the Committee Consideration
Criteria.

1 BACKGROUND

- 1.1 This application, as well as the planning application Ref P1519.20, (please refer to attached report) was presented to Strategic Planning Committee meeting on 12th August 2021. To avoid the repetition of the issues, the 12th of August committee reports have been appended to this report.
- 1.2 The proposal before committee relates an application under section 73 of the Town and Country Planning Act 1990 (as amended) to vary Condition 2 of planning permission J0026.15 dated 28/10/15 to allow a reduction in parking spaces from 60 to 27.
- 1.3 The officers report recommended approval subject to a number of conditions. However, Members of the committee resolved not to support the officers recommendation, citing the following concerns;

- Those residents now occupying the 115 dwelling units may have entered into leases or tenancies with the expectation that the 60 parking spaces approved under planning permission J0026.15 would be available for their exclusive use.
- The loss of car parking spaces which were secured through the condition with respect to the original prior approval scheme, would be detrimental to the amenities of the occupiers of the site

1.4 Having resolved to not support the officer recommendation, a discussion took place as to reasons for refusal based on the above, with officer advice as to the adequacy or otherwise of reasons being put forward being given. Subsequently, the Assistant Director Planning decided that further consideration of the matter should be suspended so that a report could be presented setting out the advice. The purpose of this report is to set out advice and recommend an alternative and more defensible reason for refusal.

2 SUMMARY OF KEY REASONS FOR RECOMMENDATION

2.1 The proposed variation to condition would result in the provision of 27 car parking spaces instead of 60. The reduction of the number of car parking spaces to 27 is considered acceptable in this location and would meet both the local and London Plan policies. Hence, there could be no reason for refusal with respect to the reduction of the number of car parking spaces and the officers have not been able to identify policies which could provide a sound defensible reason for refusal with respect to the principle of reduction of number car parking spaces. Given the location of the site within a highly accessible sustainable location a car-free scheme would be required in this location. As such any refusal with respect to the reduction of number of car parking spaces would also likely to be regarded as unreasonable with subsequent risk of costs award at appeal.

2.2 However, currently there is no means of ensuring that the development would constitute a car free scheme. There is no legal agreement in place to prevent the existing and the future occupiers of the site to obtain parking permit in the Residential Parking Zone. Therefore, any reduction in the number of on-site car parking spaces could potentially result in the over-spill onto the existing heavily parked area within the controlled parking zone with an adverse impact upon the amenity of existing residents who have permits, highway safety and the free flow of traffic.

RECOMMENDATION

3.1 Refuse planning permission for the following reasons;

There is no effective control or mechanism to prevent the existing or the future occupiers of the Verve Apartments (ground, first, second and the third floor) from obtaining parking permits in the Residential Control Parking Zone and as result of the loss of 33 car parking spaces which are meant to be available to them, there would be a significantly increased risk of on-street car parking demand and the over-spill of the cars onto the existing heavily park roads resulting in a detrimental impact upon the safe and free flow of traffic in the control parking zone and consequential detriment to the amenities of the existing residents, thereby the proposal fails to satisfactorily mitigate the parking impacts of the development, contrary to the provisions of Policy 24 of the local plan (2016-2031) adopted 2021.

4 Proposal

- 4.1 The proposal would not involve any physical (internal or external) alteration to the existing building. Condition 2 states:

The car and cycle parking spaces detailed by the Technical Note produced by Entran dated September 2015 shall be permanently retained for use by occupants of the residential conversion and for no other purposes whatsoever.

- 4.2 The variation/removal of conditions would result in a reduction in the number of parking spaces from 60 to 27.

5. Site and Surroundings

- 5.1 The application relates to an office building which has been converted to 115 dwelling units with addition of two floors providing a further 22 dwelling units. The building is located within a town centre location. For further detail please refer to the attached earlier committee report.

6 Planning History

- 6.1 There is a lengthy planning history on the site. Please refer to the attached committee report. However, as well as the previous approval currently as well as the application subject of this report, there are two other concurrent application as follows;

1. P1519.20; internal rearrangement of 20 units approved on the roof of Verve Apartments (formerly Hexagon house) enabling their subdivision to create an additional 2 units (retrospective).

This application was approved by the committee on the 12th of August, subject to conditions and legal agreement. However, so far the applicant has refused to sign the legal agreement without providing any reasonable justification.

2. P0850.20; Variation of conditions 2 (Approved plans) and 3 (number of parking spaces) of planning permission P0071.16 dated 08/03/18 (Erection of 20 Flats on top of Existing Building) to allow a decrease in the number of required parking spaces from 60 to 27

7 Consultation

- 7.1 There has not been any further consultation with respect to this report. However, the scheme has been subject to two rounds of consultation, the details of which were presented to the committee and contained with the 12th of August committee report attached.

8 MATERIAL PLANNING CONSIDERATIONS

- 8.1 The main planning issues raised by the application that the committee must consider are:

- The legal issues lease hold interest ;
- The impact upon the amenities of the local residents
- The impact of the proposal upon highways safety and the free flow of traffic.

8.2. Legal Issues

- 8.3 In the previous meeting, Members expressed concern that the variation of the condition would prevent those residents with a right or expectation of a parking space from being able to park and own vehicles.
- 8.4 Planning Permissions fall within public law. They are granted under statute and they convey no legal or equitable interest in land. Any person may apply and may be granted planning permission over land they do not own. In those circumstances having the benefit of planning permission alone without ownership would deny the applicant the necessary private property rights to implement the planning permission.
- 8.5 The principle of exclusivity in this context means that you cannot rely on a public law permission to enforce a private law interest. Therefore though condition 2 of the original planning (J0026.15) required the provision of 60 parking spaces that remains a public law permission and is not and cannot become a basis to enforce a private law interest. In the inverse circumstance if the leasehold interests of the residents of Verve Apartments included parking spaces (a private law interest) the granting of permission to vary condition 2 and reduce the number of parking spaces would not overcome or displace the leaseholders' private law rights.
- 8.6 It follows that private interests in land subject to a planning application are not a material planning considerations in the determination of the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the

basis on which planning decisions must be made: *"If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise"*.

Legal Risks

- 8.7 While it is established law that costs implications and reputational damage that may result from planning decisions are not material to the determination of planning decisions, it is entirely proper and sensible that decision makers are given advice by officers on the potential costs consequences of their decisions. Planning Practice Guidance on the role and purpose of the costs regime in planning appeals is set out as follows:

"The aim of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay".

- 8.8 There is a statutory duty to give reasons when refusing planning permission. That statutory duty is set out in The Town and Country Planning (Development Management Procedure) (England) Order 2015:

35 (1)(b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision;

- 8.9 Planning Officers set out in their report to the Strategic Planning Committee of 12 August 2021 the policies in the development plan which are relevant to the decision. In the intervening period having re-examined the relevant policy in the development plan officers have concluded that there are development plan policies that could support refusal. Turning back to the statutory basis on which planning decisions must be made: *"If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise"*.

- 8.10 In this context regard must be had to the development plan because there are development plan policies relevant to the determination of this proposal. Paragraphs 8.7 and 8.8 of the report to the Strategic Planning Committee of 12 August 2021 set out the development plan policy context:

- *London Plan Policies seek to ensure that impacts on transport capacity and the transport network, at both a corridor and local level, are fully assessed. Development should not adversely affect safety on the transport network. Policy T6.1 (Residential Parking Standard) of London Plan 2021 requires all schemes within areas subject to PTAL 6 rating to be car free. This is also echoed by DC33 of Havering Councils CS and DCPDPD which indicates*

proposals will not be supported where they would have an unacceptable adverse impact on the capacity or environment of the highway network.

- 8.11 It should be noted that since the August committee meeting, the council has now adopted the new Local Plan for the borough and therefore, the previous policies including policy DC33 have now been superseded. However, the committee report evaluated the application with respect to the emerging policy which has now been adopted and now the adopted policy 24 of the Local Plan, explaining
- *Accessibility Level (PTAL) for the site is set at 6b meaning that the site is classified as having the best access to public transport. Policy 24 of Havering's draft Local Plan requires that outside of PTAL's 0-2, the London Plan parking standards be applied. Car free development is therefore in accordance with planning policy.*
- 8.12 Policy 24 of the adopted plan provides the guidance and requirements for car parking provision for the borough. Similar to its predecessor it advocate a maximum number of parking provision across the borough, except for the areas which hat have low public transport access (PTAL 0-1) and further flexibility with respect to areas with PTAL rating of 2. It would
- 8.13 At paragraph 10.2.4, the commentary notes explain, the London Plan Parking Standards clearly outline the need for more sustainable travel. And at paragraph 10.2.6, it is explained that some areas of the borough (such as central Romford and Upminster) have good or very good access to public transport. In areas well served by public transport and therefore with high PTAL levels, the Council has an obligation under the London Plan to reduce private car use and provide fewer parking spaces in comparison to other parts of the borough.
- 8.14 Therefore the position with respect to car parking provision, would remain the same and in accordance to the policies, a car free scheme would remain acceptable in this location.
- 8.15 It should be noted that while development plan policy supports car free development this proposal would through the revised wording of condition 2 retain 27 parking spaces. Therefore in principle the scheme could not be refused due to the reduced number of car parking provision.
- 8.16 A reduced number of car parking spaces is only acceptable subject to the development forming a car free scheme. The officers consider that if the application were to be refused the residents would have no option but to apply for a Residents Parking Permit (RPP), which would indeed increase on-street parking demand, unless the property were made permit free subject to a Section 106 legal agreement.
- 8.17 However, there is no legal agreement in place to prevent the future occupiers of the site to obtain parking permit. Further it would be highly unlikely that the

existing occupiers would be willing to sign a legal agreement forfeiting their right to access residential parking permits.

- 8.18 Because, the loss of the parking spaces would almost inevitably result in an increase in on-street parking demand. The loss of parking spaces is considered to be material in the context of the well-known central zone problem of high parking demand, which has impacts on drivers who are being forced to circulate around an area seeking empty spaces, leading to disturbance to residents, congestion, environmental pollution, and drivers being forced to park in dangerous or inconvenient spaces.
- 8.19 All the immediate surrounding roads are subject to strict parking restriction preventing any form of short or long term parking. The nearest streets within the CPZ which officer controlled parking spaces for the residents, includes; Gloucester Road, Kingsmead Avenue, Regarth Avenue, Alexander Road, Hearn Road and King Edward Road. These streets are at some distance away with the nearest King Edwards road almost 450m away. All these road are at the saturation level (95% occupancy or above).
- 8.20 The entire zone e is subject to one Controlled Parking Zone and most on-street parking spaces are restricted to holders of a Residents Parking Permit (RPP). Thus, the officers consider that the loss of on-site parking should only be allowed if properties were made permit free. If this permission is granted, the residents could apply for a RPP to enable them to park on the street. On-street parking could involve longer or shorter car journeys depending on whether a parking space was found on the approach to the property. However, the increasing demand on the limited supply of parking spaces would increase the likelihood of residents generally having to drive further to find a parking space, with the consequential difficulties of parking stress.
- 8.21 The only option available to effectively exclude the building from CPZ would have to be through the amendment to the existing Traffic Management Order (TMO).
- 8.22 Any amendment to the current traffic management order would have to be subject to extensive public consultation – via adverts in newspaper and letters to those affected. And if there were to be significant objections the final decision would rest with the Highway Advisory Committee of the Council and/or the relevant Cabinet Member. Given the serious parking space shortage within the CPZ, it would be likely that any proposal to exclude the building from the CPZ would be accepted. However, even at this stage the Residents could legally challenge the Traffic Management Order amendment through the courts and that there would be no certainty as the success in defending the case.
- 8.23 It is noted that during the course of the application the agent had sought to pursue a mechanism to amend the traffic management order to exclude the building from the control parking zone. Further, the previous committee report included a condition requiring the amendment of the TMO, however upon

further legal advice, the unacceptably significant length in the process of the change in TMO, and the uncertainty of the outcome of the achieving TMO, and that the process of the amendment to the TMO has not even begun, the officers have come to the conclusion that a condition may not provide sufficient certainty and the application could be refused at this stage.

- 8.24 The residents of the block of flats have suffered years of construction works and have been denied access to any car parking spaces. Furthermore, for almost 5 years, the building has not been provided with the required 115 cycle spaces, nor have suitably appropriate facilities for the waste and recycling storage been provided. Any further lengthy delay would have a significant impact upon the essential amenities of the occupiers and the adverse impact upon highways condition.

9 CIL and other Financial and Mitigation measures

- 9.1 Given the scheme originally emerged through the prior approval regime, the development would not be CIL liable, nor would be subject to any financial contribution or affordable housing provision.

10 Conclusions

- 10.1 It is considered that the reduction of the car parking space in this sustainable location is acceptable. But the reduction is only acceptable subject the development to become a car free scheme. However, currently there is no enforceable legal mechanism which could effectively prevent the existing residents applying for RPP.
- 10.2 There is no effective control or mechanism to prevent the existing or the future occupiers of the Verve Apartments (ground, first, second and the third floor) from obtaining parking permits in the Residential Control Parking Zone and as result of the loss of 33 car parking spaces which are meant to be available to them, there would be a significantly increased risk of on-street car parking demand and the over-spill of the cars onto the existing heavily park roads resulting in a detrimental impact upon the safe and free flow of traffic in the control parking zone and consequential detriment to the amenities of the existing residents, thereby the proposal fails to satisfactorily mitigate the parking impacts of the development, contrary to the provisions of Policy 24 of the local plan (2016-2031) adopted 2021.
- 10.3 All other relevant policies and considerations have been taken into account. The details of the decision are set out in the recommendation.