

Appeal Decision

Site visit made on 12 September 2016

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 7 October 2016

Appeal Ref: APP/U5930/W/16/3150342

69 Browning Road, London, E11 3AR

- 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 Mr Pani Patsalos against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 153552, dated 13 November 2016, was refused by notice dated 1st March 2016.
 - The development proposed is to demolish existing single storey garages and workshop and construct two 4 bed homes and one 3 bed home.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues for the appeal are:
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on a protected tree;
 - The effect of the proposal on the living conditions of adjoining residential occupiers;
 - Whether the proposal makes adequate provision for affordable housing.
 - Whether the proposal would be able to be accessible to fire services;

Reasons

Policy Background

3. The appellant advises that a deliverable 5 year supply of housing is not available in the Borough. The Council has not commented on whether or not it has a housing shortfall. As the Council has not addressed this matter in its representations I must conclude that it has not demonstrated that it has a 5 year supply of deliverable housing sites. As such paragraph 49 of the *National Planning Policy Framework* (the Framework) is engaged and relevant policies for the supply of housing must be considered out-of-date. Paragraph 14 of the Framework advises that where the development plan is out-of-date permission should be granted, unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
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4. The plan for the Borough is the *Waltham Forest Local Plan Core Strategy* (CS), which was adopted in March 2012 and the *Development Management Policies Local Plan* (LP), which was adopted in October 2013. Among the policies the Council have referred to is policy CS2 of the CS which seeks to ensure a continuous supply of land and homes to meet a range of housing needs in the Borough. Policy DM3 of the LP seeks to ensure a supply of affordable housing in the Borough.
5. Although these policies are out-of-date as a result of housing land supply issues, and in part predate the guidance in the *National Planning Policy Framework* (the Framework), they are nonetheless consistent with the aim of delivering a wide choice of high quality homes and creating inclusive and mixed communities as expressed in the Framework and therefore still carry some weight in the planning balance.

Character and Appearance

6. The site comprises an open area of hardstanding on which sit some lock up garages or workshops which is enclosed by the gardens of dwellings on all sides and accessed through an undercroft under No 69 Browning Road. The proposal comprises 2 semi-detached and one detached dwelling built over three floors, one of which would require the excavation of a basement. The Council consider that the proposal would fail to reflect the prevailing urban form and building typology in the local area. The dwellings would have a contemporary appearance, due to the proposed asymmetrical rooflines and the use of metal cladding, timber and render. These elements are in contrast to the simple proportions and predominant palette of muted brick and slate on the surrounding dwellings.
7. They would occupy a significant proportion of the site and in response surrounding properties, windows have been positioned to prevent overlooking and the bulk of the buildings would be positioned towards the centre of the site. As a result, the dwellings would have an awkward form and forced composition of openings which the contemporary materials would fail to mitigate. I note that the dwellings are not prominent in public views. Nevertheless, they would be very visible in private views from a number of dwellings which surround the site. In these views the dwellings would have a contrived and incongruous appearance which would fail to complement the simpler form of the surrounding residential dwellings, thereby causing harm to the character of the area.
8. On the first matter I therefore conclude that the proposal would conflict with CS15 of the CS and DM29 of the LP which together seek new development which responds positively to local character and distinctiveness. It would also fail to reflect guidance in the Council's *Urban Design Supplementary Planning Document* and guidance in the Framework which seeks new development which takes the opportunity to improve the character and quality of an area and the way it functions.

The Impact of the Proposal on the Protected Tree.

9. A mature beech tree lies close to the southern boundary of the site and is protected by a Tree Preservation Order. Despite lying close to the existing hardstanding and garage buildings, it appears to be in good health, and is an attractive specimen, which is visible from the rear gardens of properties which

back onto the site. The submission is accompanied by an arboricultural method statement (AMS) which states that although the proposal would intrude upon the root protection area of the tree, as this area is also currently covered in hardstanding, some root desiccation is likely to have occurred and that the development need not impact upon the health of the tree.

10. However, even if I accept that the volume of soil removal necessary to facilitate the basement level of the proposal would not impact upon the tree's long term health, the crown spread of the tree would overshadow almost all of the rear garden of one of the dwellings, which I note derives most of its light from the south facing elevation which would face the tree. It is therefore likely that if the tree survived construction, it would be subject in the longer term to pressure for removal, due to its likely effect on the living conditions of residents within the nearest dwelling. I also concur with the Council's view that the position of the dwelling does not take into account the potential for future growth of the tree.
11. On the second matter I therefore find that the proposal would have an adverse impact on the long term health of a protected tree, the loss of which would be detrimental to the character and appearance of the area. It would thereby conflict with Policy CS5 of the CS and DM35 of the LP which together seek to protect healthy trees and with guidance in the Framework which also seeks to protect aged and veteran trees unless the benefits of the proposal would clearly outweigh their loss.

Living Conditions

12. The Council consider that the proposal would lead to an increase in noise and activity that would cause a loss of amenity to adjoining residents. The site is currently occupied by lock up garages and although these in part appeared vacant at the time of my visit, I nonetheless take account of the potential for noise that use of the garages could cause. In this regard I do not consider that 3 dwellings would lead to a greater level of general activity than that which could already occur on site.
13. Adjoining residents have raised concerns in relation to the effect the proposal would have on resident's privacy, and also in relation to outlook and loss of sunlight and daylight. I note that the buildings have been designed to prevent direct overlooking into adjoining dwellings and that in the context of interlooking between rear windows that is already possible at the site, the proposal would not further reduce levels of privacy. The daylight analysis on the submitted plans also shows that neighbouring dwellings are unlikely to suffer a loss of sunlight or daylight to facing rooms.
14. However, the height and close proximity of the dwellings to adjoining gardens is nonetheless likely to cause overshadowing to parts of a large number of the adjoining gardens. Furthermore, the existing yard is largely open and the existing garages sit at a relatively low level. In contrast, the proposed dwellings, due to their size and position would appear as a dominant and overly prominent feature in views from the rear windows of a large number of dwellings along Beacontree Road, Browning Road and Bushwood. Taking into account the number of dwellings affected, I am led to the view that the proposal would have an unneighbourly effect on adjoining properties, which would erode the quality of the environment enjoyed by adjoining residents to an unacceptable and harmful degree.

15. On the second matter I therefore conclude that although the proposal would not lead to excessive noise or disturbance it would nevertheless harm the living conditions of adjoining residential occupiers due to the unneighbourly effect of the proposal on the outdoor space of the development on large numbers of adjoining occupiers. It would thereby fail to comply with guidance in the Framework which seeks a good standard of amenity for all existing and future occupiers of land and buildings.

Provision for Affordable Housing

16. Policy DM3 of the LP requires residential development on small sites to make a contribution to affordable housing provision. In this case the contribution has been calculated as £47,304. Recent changes¹ to *National Planning Practice Guidance* in relation to small scale and self-build development state that tariff style contributions should not be sought from developments of 10 or less dwellings. This is a significant material consideration, to which I must have regard.
17. The proposal relates to 3 dwellings dwelling, and falls below the threshold identified in the Ministerial Statement. Notwithstanding the above policies, to require that a contribution is made in this case would run contrary to more recently expressed Planning Policy Guidance, intended to reduce the construction cost of small-scale new build housing in order to help increase housing supply.
18. I take into account the contribution affordable housing makes to the supply of a range of housing in the Borough. Nevertheless, in the light of this change to national policy, such a contribution would fail to meet all the tests of paragraph 204 of the Framework in relation to planning obligations. I note that this point is also accepted by the Council. Accordingly, I also do not consider it to be appropriate in this case.

Accessibility for the Fire Service

19. The site would be accessed via an undercroft from Browning Road which runs under No 69. The Fire Service have expressed concerns regarding the accessibility of the site to fire appliances and have drawn the Council's attention to the requirement under building regulations that all parts of the dwelling can be accessed to within 45m by a fire appliance.
20. I take into account the appellant's view, that this matter is a concern of building regulations rather than planning, but I am inclined to disagree. It is not in the public interest to encourage development which cannot be safely accessed in the event of an emergency. I have been provided with no evidence of how alternative access for fire appliances could be achieved, or any mitigating circumstances which might apply in this case. In this regard the proposal would fail to comply with policy CS15 of the CS which seeks to incorporate high quality and inclusive design measures to create an attractive, safe, healthy, accessible and sustainable environment throughout Waltham

¹ This PPG guidance was added following the Secretary of State's successful appeal to the Court of Appeal on 11 May 2016, overturning the previous High Court judgment on 31 July 2015 on applications by West Berkshire District Council and Reading Borough Council for judicial review of the Written Ministerial Statement policy changes. These relate to the Written Ministerial Statement issued on 28 November 2014 setting out national policy on s106 regarding affordable housing contributions for small-scale development, to be read alongside the National Planning Policy Framework.

Forest. It would also fail to comply with guidance in the Framework which seeks to ensure that safe and suitable access can be achieved for all people.

Other Matters

21. The proposal would provide 3 dwellings in a sustainable location. Taking into account the impetus for growth implicit in the Framework, this is a matter to which I attribute substantial weight.

Conclusion

22. The proposal would have an adverse effect on the living conditions of adjoining occupiers, would harm the character of the area and would not provide accommodation which can be safely accessed by emergency vehicles. It would also be likely to lead to loss of a protected tree, which would have a further adverse effect on the area's established character.
23. The proposal would make a small contribution the proposal would make to housing supply in the district. However, this would be insufficient to outweigh the harm identified above. This would amount to substantial and greater harm, which would significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework as a whole. As such, the appeal proposal would not benefit from the presumption in favour of sustainable development as set out in Paragraph 14 of the Framework.
24. Therefore, for the reasons set out above, and having regard to all other matters raised, the appeal must be dismissed,

Anne Jordan

INSPECTOR