

Appeal Decision

Site visit made on 11 October 2016

by Alex Hutson MATP CMLI MArborA

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

Decision date: 16 November 2016

Appeal Ref: APP/Z5060/W/16/3152162

43 and 47 Waverley Gardens, Barking, Barking and Dagenham IG11 0BH

- 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 The Vine Residential Services against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 15/01449/FUL, dated 9 October 2015, was refused by notice dated 15 December 2015.
 - The development proposed is two storey and single extension to the rear of No 43 & 47 Waverley Gardens change of use from residential to full time care home for young people.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. During my site visit I observed that the boundary fencing between the rear gardens of 43, 45 and 47 Waverley Gardens had been removed to form a single large amenity space to the rear of these properties. In addition, I observed that some single storey structures were present along the rear boundaries of Nos 43-47, which appeared to have been recently constructed. Nevertheless, it is not clear from the representations whether or not what I observed was the commencement of any recent planning consent subsequent to the lodging of this appeal, whether or not planning consent for such works is required or whether or not the removal of any boundary fences is temporary. I have therefore determined the appeal on the basis of the plans before me.

Main issues

3. The main issues are the effect of the proposal on the living conditions of the occupiers of 41 Waverley Gardens with particular regard to light and outlook; whether or not there is sufficient justification to support the loss of family living accommodation; and the effect of the proposal on the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance.

Reasons

4. The appeal properties comprise two, two storey terraced dwellings located on the southern side of Waverley Gardens. The appeal properties are separated by No 45 which is an existing care home owned and operated by the appellant.
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The wider area is predominantly residential in character. The proposal seeks to erect part single, part two storey rear extensions and loft conversions including rear dormer windows in respect of both appeal properties. In addition, the proposal seeks to change the use of the appeal properties from residential dwellings to care homes to accommodate up to 8 young people with mild to moderate learning disabilities.

Living conditions of the occupiers of 41 Waverley Gardens with particular regard to light and outlook

5. A residential dwelling, No 41, lies to the immediate east of No 43. The windows of No 41 nearest No 43 include ground floor windows which serve a kitchen and a first floor window which serves a bathroom. A patio area lies to the immediate rear of No 41, to the immediate east of an existing single storey rear extension at No 43. The Council raises the concern that given the close proximity of the proposed single storey and two storey rear extensions at No 43, the occupiers of No 41 would experience a harmful loss of light and outlook.
6. The appellant has submitted a Daylight and Sunlight Assessment (DSA) as part of the appeal. The Council has not provided any assessment of the findings of the DSA. However, the DSA has been undertaken in accordance with current best practice¹ and concludes that any loss of either sunlight or daylight to the habitable rooms or to the rear garden of No 41 would be negligible and within the acceptable levels as set out within the current best practice. I have no substantive reasons before me to conclude otherwise on this matter.
7. As such, I am satisfied that the proposed single storey and two storey rear extension at No 43 would not result in any significant loss of sunlight or daylight for the occupiers of No 41 and their living conditions in this regard would be adequately maintained. This is notwithstanding that these elements of the proposal would not strictly accord with the advice set out within the Council's Residential Extensions and Alterations Supplementary Planning Document (SPD) 2012 in respect of rear extensions.
8. Given that the first floor window and the ground floor window of No 41 that are located nearest No 43 do not serve main habitable rooms, and appeared to me to incorporate partially obscured glazing, I do not consider that the occupiers of No 41 would experience any harmful loss of outlook in respect of these rooms. In addition, given the generous separation distance of any other rear facing windows within No 41 which serve main habitable rooms, such as bedrooms or living rooms, combined with the orientation of the proposed rear extensions, it is unlikely that the outlook from these rooms would be detrimentally affected.
9. However, built form would substantially increase in height in close proximity to the rear patio area of No 41 as a result of the two storey rear extension and would extend considerably further along the shared boundary in close proximity to it as a result of the single storey rear extension. In addition, the built form of the single storey rear extension, given its height, would protrude a substantial amount above the height of the shared boundary fence. For these reasons, I consider that these elements of the proposal would result in an overbearing form of development and overwhelming sense of enclosure for

¹ Building Research Establishment 'Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice', Second Edition, 2011

the occupiers of No 41 when using their rear garden. Consequently, this would have a significant and harmful effect on their outlook and would considerably reduce their enjoyment of their rear garden.

10. I acknowledge the appellant's argument that the two storey rear extension would satisfy the provisions of the Schedule 2, Part 1, Class A, Paragraph A.1.(h) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, the appellant has not demonstrated with any clear evidence that it would satisfy all other provisions under this part of the GPDO. As such, I do not consider that this is a material planning consideration to which I can afford any significant weight. In any case, the issue of whether or not planning permission is required for a specific part of a development is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990.
11. Whilst I have not found harm to the living conditions of the occupiers of No 41 in respect of sunlight and daylight, I have found significant harm in respect of outlook. The proposal would therefore be contrary to Policies BP8- Protecting Residential Amenity and BP11- Urban Design, of the London Borough of Barking and Dagenham Borough Wide Development Policies Development Plan Document 2011 (DPDPD). These policies require, amongst other things, development to maintain residential amenity, including in respect of outlook. These policies are consistent with the broad aims and objectives of the National Planning Policy Framework (the Framework) that seek planning to secure a good standard of amenity for all existing occupants of land and buildings.
12. The proposal would also be contrary to the guidance set out within the SPD which advises that single and two storey rear extensions should not have a material impact on neighbouring amenity, including in respect of outlook.

Loss of family living accommodation

13. Policy BC4- Residential Conversions and Houses in Multiple Occupation, of the DPDPD, seeks, amongst other things, to preserve and increase the stock of family housing in the Borough and to resist proposals which involve the loss of housing with three or more bedrooms. The appeal properties are both three bedroom dwellings and as such, can reasonably be said to fit into the category of the type of housing that the Council seeks to preserve and increase.
14. I acknowledge that the second part of Policy BC4 refers to flat conversions and houses in multiple occupation, and cannot therefore reasonably be applied to the proposal under consideration in this appeal. Nevertheless, whilst the change of use of the appeal properties to full time care homes would continue to provide a type of residential accommodation, it would not be accommodation to house families. Moreover, whilst Policy BC4 dates from 2011, the appellant has not demonstrated, with any clear evidence, that the type of housing this policy seeks to preserve and increase is no longer relevant in the Borough.
15. I accept that the proposal would provide two additional bedrooms within each of the appeal properties and would not appear at odds with the character and appearance of other dwellings along Waverley Gardens, given that there would be no external changes to the frontages of the appeal properties. Nevertheless, the Council's evidence strongly indicates that there is not a need in the Borough for full time accommodation for young people with mild to moderate learning disabilities that would outweigh the need for family living

accommodation. The Council also suggest that the costs of using such a service may prove inhibitive. In addition, whilst the appeal properties could reasonably be converted back into family accommodation in the future, there is no indication from the appellant that this is likely to occur.

16. I have carefully considered the content of The Vine Residential Services (TVRS) supporting statement. Whilst I note there may be an increase in the number of people with an autism spectrum disorder in the future, this does not necessarily mean that these people would require full time residential care away from their homes. In addition, I note the appellant's concern that placements many miles from the family home can cause fragmentation to family life. Whilst there may be a demand for such a service within other Boroughs which could be referred, the appellant has not specified which Boroughs, or the distances from such Boroughs to the appeal properties. As such, I can not be confident that any referrals would alleviate the appellant's concerns in this regard. I do not, therefore, consider that the TVRS supporting statement demonstrates a sufficient need, in this instance that would outweigh the loss of family living accommodation.
17. In light of my above reasoning, I conclude that the proposal would result in the unjustified loss of family living accommodation in the Borough which would conflict with the housing aspirations of the Council. This would be contrary to Policy BC4, of the DPDPD.

Living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance

18. Any future residents of the appeal properties would be picked up by support staff at staggered intervals between the hours of 0900-1100 including weekends, for either educational or community activities. They would then be dropped off at staggered intervals between the hours of 1600-1900. Each of the appeal properties would also have one manager on duty between the hours of 0800-2000 and two managers on duty between the hours of 2000-0800.
19. I acknowledge that this is likely to result in a greater level of activity and intensity of use when compared to the use of the appeal properties as single family dwellings. Nevertheless, during my site visit, which occurred in the late afternoon, I observed numerous vehicle and pedestrian movements along Waverley Gardens that contributed to a moderate level of ambient noise along this street. I have no substantive reasons before me to conclude that this would significantly alter at different times of the day. Moreover, given the built up, urban context of Waverley Gardens, a moderate level of ambient noise can reasonably be expected for such a street.
20. Consequently, I do not consider that any increase in vehicular activity, particularly given its staggered nature, or the staggered comings and goings in the mornings and late afternoons/early evenings of any future residents, would materially affect the level of ambient noise along Waverley Gardens.
21. I note the concerns of some third parties in respect of noise and disturbance levels as a result of any future residents' use of the rear garden areas. However, the Council has not raised this matter as a concern and it is unlikely, based on the evidence before me, that any noise and disturbance levels would differ significantly from that generated by the use of these gardens by a single family. Moreover, the appeal properties would be empty for large parts of the

day at which times the gardens would not be used. In addition, the submitted plans and evidence indicate that the rear gardens would be maintained as separate garden areas for each of the appeal properties and as such, would not be used communally for all residents of Nos 43-47. This would further minimise noise and disturbance levels associated with their use.

22. I therefore consider the proposal would not result in a harmful level of noise and disturbance for the occupiers of neighbouring properties and would therefore comply with Policy BP8, of the DPD in this regard. This policy requires, amongst other things, development to ensure existing occupiers are not exposed to unacceptable levels of noise pollution and general disturbance through such activities as traffic movements to and from the site.

Other matters

23. The proposal would occupy a location with a good level of access to local services and facilities. Some short term construction jobs and some longer term care home staff jobs would be created which would make a modest contribution to the local economy, as would an increase in local spending by any future occupiers. I also have no doubt that the appellant operates a professional business and would provide a high quality service. Nevertheless, the harm I have identified in respect of the living conditions of the occupiers of No 41 and the unsubstantiated loss of family housing would significantly and demonstrably outweigh these benefits.
24. I acknowledge a number of third party concerns, including in respect of highway safety, privacy, flood risk and property devaluation. However property devaluation is not a material planning consideration to which I can afford any significant weight. With regard to the other matters, these were not raised as a concern by the Council and based on the evidence before me I have no substantive reasons to take a different view.

Conclusion

25. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR