

Appeal Decision

Site visit made on 12 December 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 23rd December 2016

Appeal Ref: APP/U5930/W/16/3156625

Land at corner of Acacia Road and Sansom Road, Leytonstone E11 4QD

- 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 Theori & Partners Ltd against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 161231, dated 25 March 2016, was refused by notice dated 19 May 2016.
 - The development proposed is change of use from two B1 units into one self-contained flat and configuration of existing flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address provided by the application form has been updated in subsequent documents. I adopt the address given with the appellant's statement of case as I consider it most accurately reflects the site before me.
3. The appeal proposal relates to a building which was previously granted planning permission by the Council in 2012 for 8 x 1 bed flats and 2 x B1 commercial units, with subsequent minor modifications granted in 2013. At the time of my visit, the building was complete albeit with an internal layout different from the proposal before me and not including B1 units. The internal layout of the building as proposed, would omit the B1 units and be configured to provide a total of 9 residential flats (4 x 1 bed and 5 x 2 bed) as indicated on the submitted plans. In the interest of certainty, this appeal is determined on the basis of the internal layout of the building as proposed rather than existing.

Main Issues

4. The main issues of this appeal are:
 - The effect of the development on employment provision in the borough, and;
 - Whether the proposal would provide for a satisfactory living environment for future residents.
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Reasons

Employment provision

5. The appeal site comprises a part two storey and part three storey building located on land at the eastern side of the junction of Acacia Road and Sansom Road. The site was formerly used as an outdoor vehicle storage/scrapyard associated with an adjacent MOT/vehicle repair use that continues to operate on adjacent land to the north and within adjoining railway arches. Other than employment uses in the vicinity of the railway arches, the immediate surroundings on Acacia Road and Sansom Road are predominantly residential with a mix of terraced houses and blocks of flats to the south and west.
6. Policy CS8 of the Waltham Forest Local Plan Core Strategy (CS), adopted March 2012, seeks to facilitate sustainable economic growth. In doing so, amongst other things, this includes encouraging a mix of employment facilities and types, including the provision of employment spaces suitable for small and medium enterprises, and creative/cultural industries, particularly in Borough Employment Areas.
7. The supporting text of Policy CS8 at paragraph 11.5 emphasises the difficulty of finding land suitable for employment purposes in densely populated areas, the importance of patterns of growth where residents can access work locally and seeks a high level of protection where fit for purpose land exists. This links to Strategic Objective 8 which seeks to facilitate sustainable economic growth by safeguarding and enhancing an appropriate range of sites and premises to meet the demand of local businesses and growth sectors. Nevertheless, Policy CS8 indicates that a pragmatic approach will be taken to non-designated employment land and premises that can clearly be demonstrated to be surplus to requirements and no longer fit for purpose, so that it can be released for more productive uses, with priority given to mixed use developments.
8. The site is not allocated as a Strategic Industrial Location or a Borough Employment Area. Policy DM20 of the Waltham Forest Local Plan Development Management Policies (DMP), adopted October 2013, specifies that support will be given to applications for more productive uses in non-designated employment land (i.e. land currently or last used for such purposes but not identified on the policies map). However, this is subject to, amongst other things, clear barriers to future employment use, and that there is no reasonable prospect of the premises being re-let or sold for employment purposes having been marketed at a reasonable market price with reasonable terms and conditions. The proposed use should also be suitable to its surroundings.
9. With regard to the above, the building was previously approved as a mixed use development of residential and B1 employment use on non-designated employment land. It is therefore, reasonable that although the proposed residential use would be suitable to its surroundings, there are no clear barriers to the use of part of the building for employment use. The change of use of part of the building from 2 B1 units, as previously granted planning permission, to residential flats as proposed would result in a harmful loss of employment premises that would be suitable for small enterprises and creative/cultural industries.

10. There is no evidence before me which demonstrates that B1 units within the appeal premises have previously been made available for business use and remained empty or that a period of unsuccessful marketing has taken place. In such circumstances, based on the evidence before me, it has not been clearly demonstrated that B1 units within the premises, as previously granted planning permission, would be surplus to economic and employment requirements in the borough. The proposal, therefore, conflicts with Policy CS8 of the CS and Policy DM20 of the DMP.
11. In reaching the above findings, I have taken into account that the appellant has referred to an example of unsuccessful marketing of B1 units at another site in Waltham Forest that is within their ownership. In addition, the demolition of commercial premises for residential schemes to meet housing demand at Fulbourne Road and Sutherland Road has also been brought to my attention. However, the full details of these examples have not been provided and I, therefore, cannot be certain that the circumstances are a direct parallel with the proposal before me. In any case, I have determined this appeal on its own merits.
12. I conclude that the development would result in the harmful loss of employment provision in the borough, contrary to Policy CS8 of the CS and Policy DM20 of the DMP. The policies are consistent with the National Planning Policy Framework (the Framework).

Living environment

13. It is common ground between the main parties that the internal floorspace of each flat as proposed would satisfy the minimum internal space requirements of Policy DM7 of the DMP as set out in its accompanying Table 8.1. These standards are consistent with the nationally described space standard¹, as adopted by The London Plan (amended March 2016). Each flat also has habitable rooms with adequate outlook and daylight provision in accordance with Policy DM32 of the DMP. Consequently, the development would provide a satisfactory living environment for future residents with respect to proposed internal living space.
14. Notwithstanding the above, Policy DM7 of the DMP also includes external amenity space standards, within which it seeks that all homes, including flatted development should have access to an element of private space. However, access to private amenity spaces and gardens is not a feature of the mixed use development previously granted planning permission due to the constraints of the site relating to its size, shape and relationship to the railway arches.
15. The privacy and form of amenity space required to serve flats can reasonably include communal space as an alternative. Communal amenity space is provided to the front of the building and enclosed by a low wall, with the area also accommodating external bin and cycle stores. Although this area offers limited privacy given its location fronting Acacia Road and Sansom Road respectively, it does provide a functional space for residents.
16. The overall size of the communal amenity space would appear to be less than required by Policy DM7 to serve all of the flats within the building at a rate of 10 sq.m per bedroom. However, paragraph 8.7 of the supporting text of

¹ Technical housing standards – nationally described space standard, DCLG 2015

Policy DM7 indicates that external space standards will be considered on a site by site basis. This includes a flexible approach taken based on, amongst other things, access to shops, public transport, public services, community facilities, parks and green spaces, and the constraints of the site.

17. With regard to the above, I have previously referred to the constraints of the site which limits the potential for private or additional communal amenity space. Furthermore, I observed that a children's play area is located immediately to the eastern side of the railway arches at the junction of Acacia Road with Montague Road. In addition, a large park and amenity space at Wanstead Flats and local services within Leytonstone District Centre are also close by. Taking all of these matters into account, the provision of communal amenity space within the site together with the suitable access to abundant public open space and local services nearby would ensure a satisfactory living environment for future residents.
18. In reaching the above findings, I have taken into account that Policy DM7 of the DMP suggests that where external amenity space standards cannot be provided on site, the Council may require financial contributions towards the enhancement or upgrade of provision of local open space in the vicinity of the development. However, no specific projects have been identified. In any case, the size of development would fall below the threshold for affordable housing and tariff style planning obligations (section 106 planning obligations) identified in Planning Practice Guidance (PPG)², whereby contributions should not be sought.
19. I conclude that the proposal would provide for a satisfactory living environment for future residents. The development, therefore, would not be contrary to Policy CS2 of the CS and Policies DM7 and DM32 of the DMP. The policies are consistent with the Framework.

Other Matters

20. The development offers potential benefits in terms of increasing housing supply and housing choice in a relatively accessible location. The proposal would also have economic benefits to the surrounding area through Community Infrastructure Levy (CIL) revenue and contribution to local services. Furthermore, there would be short term economic benefits with respect to the necessary construction works associated to the development. However, the scale of these benefits is limited for a development resulting in the net addition of one residential unit. Consequently, the benefits do not outweigh the harm arising from the loss of employment premises that were previously granted planning permission.
21. During my site visit undertaken in the late morning when the MOT / vehicle repair use nearby was in operation, I observed moderate levels of traffic within Acacia Road and Sansom Road and high levels of on-street parking. The carriageways are reduced to single width where parking takes place on either side of the road. However, appropriate passing places are available for vehicles due to car parking restrictions along both streets at access points to off street parking and side roads. Although residential parking demand at peak times (i.e. early mornings and evenings) may be higher than I experienced, this would be during periods when the MOT/vehicle repair use would be closed.

² Paragraph: 031 Reference ID: 23b-031-20161116 Revision date: 16 11 2016

In such circumstances, there is no evidence before me that would indicate that the development would result in significant parking pressure or that in the absence of off street parking, the modest demand arising from the development could not be accommodated. However, the absence of concern relating to highway and pedestrian safety in this respect is a neutral factor.

22. Based on the evidence before me, there would be no harm in terms of the effect of the development upon the living conditions of occupiers of neighbouring properties and provision for refuse collection and cycle storage. However, the absence of harm in these respects is a neutral factor which does not weigh in favour of the proposal.
23. The rights of the existing residents of the flats under the Human Rights Act 1998 must be considered, in so far as those that are currently occupied and relate to the parts of the building where B1 units were previously granted planning permission. Dismissal of the appeal could require the residents to vacate the property which is their home. However, this must be weighed against the wider public interest. For the reasons outlined previously, I have found that the development would conflict with the development plan policies relating to employment provision in the borough. I am satisfied that these legitimate aims can only be adequately safeguarded by the refusal of permission. Imposition of conditions would not be capable of overcoming the harm identified. Therefore, I consider that the appeal would not have a disproportionate effect on the existing residents of the appeal property.

Conclusion

24. I have found that the development would provide for a satisfactory living environment for future residents and would have other limited benefits relating to increased housing land supply in an accessible location. However, the harmful effect of the development on employment provision in the borough, through the loss of B1 units previously granted planning permission, reflects conflict with the development plan and the Framework that is significant and overriding.
25. For the reasons given above and taking all other matters into consideration, I conclude that this appeal should be dismissed.

Gareth Wildgoose

INSPECTOR