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# Appeal Decision

Site visit made on 27 November 2017

**by Zoe Raygen Dip URP MRTPI**

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

**Decision date: 18<sup>th</sup> December 2017**

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**Appeal Ref: APP/Q5300/W/17/3181172**

**Public House, 1 High Street, Enfield EN3 4EJ**

- 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 Yaman Properties Limited against the decision of the Council of the London Borough of Enfield.
  - The application Ref 17/00076/FUL, dated 8 January 2017, was refused by notice dated 24 March 2017.
  - The development proposed is demolition of single storey extensions to the existing original building and erection of a five storey extension over basement with alterations to the existing building to provide a retail unit (use Class A1) having a floor area of approximately 597 sq m at ground and basement levels and eight self-contained residential units (Use Class C3) including two existing units, together with alteration to existing vehicular access, service road and areas for parking, service yard, refuse and bicycles and landscaping.
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by Yaman Properties Limited against the Council of the London Borough of Enfield. This application is the subject of a separate Decision.

## Preliminary matters

3. The appellant has submitted a Tree Report dated December 2016 (TR) in support of his appeal, which although referred to, was not submitted as part of the planning application considered by the Council. In addition, the appellant has submitted revised drawings 1HS-8F-01A, 1HS-8F-02A and 1HS-8F-07A to address a discrepancy between the submitted Transport Statement 2017 (TS) and the drawings considered by the Council with respect to the number of cycle parking spaces.
4. The Council has had the opportunity to comment on both the TR and the revised drawings. Consequently, I am satisfied that no party would be prejudiced were I to accept them. I have therefore had reference to them in the determination of the appeal.
5. Within its reason for refusal No 5 the Council refer to Policies CP45, CP47 and CP48 of the Development Management Document 2014 (the DMD). However Policies DMD45, DMD47 and DMD48 relate to site access and highway safety

and are referred to in the Council's statement. I have therefore taken the references in the decision notice to be typographical errors.

## **Main Issues**

6. The main issues are:

- The effect of the proposal on the character and appearance of the area
- The effect of the proposal on the living conditions of the occupiers of 25 Woodcote Close with particular regard to privacy and outlook
- Whether the proposal would provide acceptable living conditions for the future occupiers of the flats with particular regard to garden space, outlook and light
- The effect of the proposal on the vitality and viability of Enfield.
- The effect of the proposal on flood risk
- Whether the proposal provides safe and suitable access for all people
- Whether or not the proposal includes appropriate levels of cycle parking
- Whether or not the proposal provides acceptable refuse and recycling provision

## **Reasons**

### *Character and appearance*

7. The appeal site is located at the end of the High Street where it meets Hertford Road, both busy main roads in Enfield. Within the vicinity of the appeal site there are a number of terraces of buildings fronting the road, in both commercial and residential use. On the road frontage, the heights of the buildings vary from two to four storeys. As a result, there is a strong sense of enclosure to the road, in this area of mixed character and appearance. To the rear of the buildings on the main road frontage, on both sides of the road, are mainly two storey, residential properties.
8. The appeal site forms a linear plot with a frontage to the High Street which is occupied by a two storey building with rooms in the roof. It was last used as a public house at ground floor, with six residential units on the first and second floor. To the rear the land is grassed and open, allowing views from the main road through to the surrounding residential properties.
9. Policy DMD6 of the DMD requires that development complies with the London Plan Density Matrix (LPDM), along with other criteria. There is some dispute between the parties as to the parameters that have been applied in respect of the Public Transport Accessibility Level rating and area characterisation, and therefore whether the proposal is of an acceptable density for the area and complies with the densities in the LPDM. However, I note that the density of the development is not included as a reason for refusal by the Council. Furthermore, irrespective of the density of the proposal, the Council advise that both the National Planning Policy Framework (the Framework), and the London Plan Housing Supplementary Planning Guidance 2016 (the SPG) states that a numerical assessment of density must not be the sole test of acceptability in terms of the integration of a development into the surrounding area.

Moreover, Policy DMD6 also requires compliance with other design based criteria.

10. The proposal includes a large, five storey extension which would extend a considerable way to the rear of the existing building. It would be set back from the existing building, and attached via a single storey link building. Nevertheless, the substantial height and depth of the extension would introduce a particularly bulky, obtrusive feature to the rear of the property in an area where I saw no examples of such large structures to the rear of frontage buildings. The obtrusive nature of the extension would be compounded by its irregular, triangular roof form. Furthermore, the small window openings would create large, unrelieved masses of brickwork which is not characteristic of the more evenly spaced fenestration on nearby buildings.
11. There is a car park to the south of the appeal site and a petrol filling station to the north, with low level single storey structures on it. As a result, the area around the appeal site is relatively open. Consequently, the extension would be particularly visible, as an incongruous, prominent feature from both High Street and Hertford Road. Furthermore, given the substantial height differential between the existing two storey building and the five storey extension, it would dominate the existing building to an unacceptable level, irrespective of whether it is considered to be a non-designated heritage asset.
12. The triangular roof shape would be introduced to provide sufficient surface area for the installation of the required number of PV panels, identified in the appellant's Energy Strategy Report. They would be on an angle facing east, and at a height to avoid shadowing from other buildings and in particular from high trees. Nevertheless, this would not outweigh the harm caused by the height of the roof form which significantly adds to the prominence of the extension in the streetscene.
13. Trees in the vicinity of the appeal site are mainly visible along the road side and the front gardens of residential properties. The trees on the appeal site are to the rear of the public house and located in the adjacent car park and around the nearby Sadlers Mill stream. The TR identifies eleven trees in and around the site, two of which would need to be removed to facilitate the development (T10 and T11). These are small trees that have been assessed as having low quality. In any case, the appellant proposes their replacement within the scheme. I am satisfied therefore, that the loss of the two trees would not be materially harmful to the character and appearance of the area, subject to their replacement. Accordingly, there would be no conflict with Policy DMD80 of the DMD which seeks to protect trees of significant amenity value.
14. Nevertheless, for the reasons above, I conclude that the proposal would be harmful to the character and appearance of the area. It would therefore be contrary to Policy CP30 of the Enfield Plan Core Strategy 2010-2025 adopted 2010 (the CS), and Policies DMD6, DMD8 and DMD37 the DMD. These require that development is of a high quality and has special regard to its local context and surroundings, and is of a scale and form of development appropriate to the existing pattern of development.
15. The appellant states that the Council has not produced any Borough wide design standards or guidance, Borough Characterisation Study or Design Codes as required by paragraph 59 of the Framework, and referred to in Policy CP30

of the CS. Policy CP30 requires that development is of high quality and has special regard to its local context. It goes on to refer to specific design guidance that will be prepared. However, paragraph 59 of the Framework only requires that Local Planning Authorities consider using design codes. Their absence does not render the Council unable to assess proposals in relation to design. Indeed, although a local design review panel was not used, the Council advise that it received the specialist design advice of its Urban Design Officer on the proposals.

16. The Framework is clear that innovation in design should not be stifled (paragraph 60). However, it also states that it is proper to seek to promote or reinforce local distinctiveness. It seeks to ensure that new development relates well to neighbouring buildings (paragraph 59) and that development is integrated into the built and historic environment (paragraph 61). One of its key principles is that planning should always seek to secure high quality design (paragraph 17). The appeal scheme would fail to accord with these aims.

### *Living conditions*

#### *Flat 7*

17. Flat 7 would be a three bedroom flat located on the first floor of the existing building. It would have a window and a patio door providing access from the main living room to a roof terrace on the roof of the single storey link building. The five storey extension would be located just four metres from the glazed areas on the east elevation of flat 7, and even closer to the garden space. As a result of the proximity and height of the extension it would dominate the outlook from the rear windows of Flat 7 and from much of the rear garden. Because of its height and width, it would also have an unpleasantly enclosing and overbearing effect on the garden and on the outlook from the rear windows of Flat 7. Furthermore, it would also limit the light available to these windows and the garden space.
18. I acknowledge that the lounge would have a further window on its northern elevation, but this would be small and would not sufficiently outweigh the limited outlook available from the rear windows. While the existing first floor flat does not have a garden space, the poor quality of the proposed garden space would only be of very limited benefit to the occupiers, which would not outweigh the overall poor level of living conditions.

#### *Flat 8*

19. Flat 8 would be a two bedroom flat on the second floor of the existing building. However, as it would be located in the roof of the building it would not have any habitable windows facing the proposed extension. Instead, it is reliant on outlook and light from the existing dormer windows and one in the side elevation of the property. As a result, I am satisfied that future occupiers would have sufficient outlook and light.

### *Garden space*

20. Policy DMD9 of the DMD requires that new development provides good quality private amenity space that is not significantly overlooked by surrounding development and meets or exceeds minimum standards. The Policy sets out the requirements for dwellings with access to communal garden space and those that do not.

21. There is no communal garden space provided as part of the proposals. Therefore, the standards to be applied within Policy DMD9 are for a 2 bed 4 person flat 23 sq m, and for a 3 bed 5 person flat 29 sq m. The garden space provided for flats 2, 4, 5, 6 and 7 would be significantly below the requirements of Policy DMD9. These flats are of a size to potentially attract interest from families with young children who would need functional, quality outdoor space for recreation. I have already found that the garden space for flat 7 would be of poor quality.
22. The balcony areas to flats 2, 4 and 6 would be adjacent to two large trees identified as T1 and T2 within the TR. The TR identifies that there is a risk that trees may cast prohibitive shade on the finished development. In addition the trees may cause damage through direct contact between branches and the finished development, indicating their proximity to the building. I saw on site that trees T1 and T2 located on the adjacent car park would be close to the south elevation of the proposed extension. Tree T1 in particular has a canopy that extends somewhat into the site and the footprint of the extension. From the evidence before me it is likely, given the location of the trees that there would be some conflict with the balconies to flats 2, 4 and 6. Given the orientation of the proposed flats, the trees, when in full leaf, would create significant shading, both now, and in the future as both are identified in the TR as having 10-20 years growth giving poor quality garden space.
23. Since the adoption of the DMD, Standard 26 of the Mayor of London's Housing Supplementary Planning Guidance of March 2016 (the SPG) advises that a minimum of 5 sq m of private outdoor space should be available to the occupiers of one to two person dwellings, with an additional 1 sq m being required for each additional occupant of a dwelling. The size of the garden space available for flats 2, 4, 5, 6 and 7 would meet the requirements in the SPG, and this is a material consideration. However, given that it is only guidance, it would not, in my view, in this instance, outweigh the space requirements of Policy DMD9, particularly given the significant difference in the requirements of the two documents, and the poor quality of the garden space available for the occupiers of flats 2, 4, 6 (balcony only) and 7.
24. There is no relevant standard for a 1 bed 2 person flat (flats 1 and 3) or for a 2 bed 3 person flat (flat 8) within Policy DMD9. However, the size of the garden space provided for these smaller flats would meet the requirements of the SPG.

#### *25 Woodcote Close*

25. No 25 Woodcote Close is a two storey, semi-detached house sited to the north-east of the appeal site. It has a two storey rear off-shoot. I saw at my site visit that it has two first floor windows within the two storey off shoot, one of which is obscure glazed, along with two first floor windows in the main rear elevation. The boundary to the appeal site is mainly formed from dense shrubs so that the ground floor windows of the property could not be seen. It has garden space to its side and rear, adjacent to the appeal site.
26. The Council acknowledges in its statement that the measurements used in its application report in respect of the height of the extension, and the distance between it and No 25 are wrong. It nevertheless still considers that the height and proximity of the extension to No 25 would have a harmful effect on the privacy and outlook of the occupiers.

27. Policy DMD10 of the DMD requires a distance of 25 metres between rear facing windows. However, the windows in the rear elevation of No 25 face away from the appeal site, and therefore would not be directly facing the windows in the rear elevation of the extension.
28. The proposed extension would only extend a limited amount further towards No 25 than the adjacent buildings at the petrol filling station. I acknowledge that the extension would be higher than those on the petrol filling station. Nevertheless, the considerable intervening distance between the buildings, together with the oblique nature between them, would be sufficient to ensure the extension would not have an overbearing appearance, or lead to unacceptable levels of overlooking.
29. For the reasons above, while the proposal would be acceptable in some respects, it would not provide acceptable living conditions for the occupiers of flat 7 with regard to outlook and garden space and flats 2, 4, 5 and 6 with regard to garden space. It would therefore be contrary to Policies 3.5 and 7.4 of the London Plan 2016, Policies CP4 and CP30 of the CS, Policies DMD6, DMD8, DMD8 and DMD9 of the DMD, and the Framework. These require that development provides a high quality design response and standard of accommodation that provides high quality amenity space and seeks to secure a good standard of amenity for all future occupants of buildings.

#### *Vitality and viability*

30. Policy DMD25 of the DMD states that retail use outside of the town centres will only be permitted if the applicant can demonstrate to the Council's satisfaction that a sequential test has been applied, which shows no suitable sites available within or on the edge of Enfield Town, and the borough's four district centres. This is in accordance with paragraph 24 of the Framework, which requires that applications for main town centre uses to be located in town centres, and only if suitable sites are not available should out of centre sites be considered.
31. There is no dispute between the parties that the existing public house could be used for retail purposes under a Lawful Development Certificate reference LDC/10/0364 granted on 28 January 2011 (the LDC). However, the proposal involves an extension to the internal floor area of 302 sq m to 597 sq m thus an increase of 295 sq m. Therefore, the proposal almost doubles the amount of retail floor space that could be provided on the site under the LDC.
32. The appeal site is located on the edge of a local shopping parade to the south and Ponders End large local centre to the north. The appellant has provided no evidence that any suitable alternative sites or that any such sites or buildings, higher in the retail hierarchy have been considered.
33. The proposal falls well under the level of floorspace which would trigger the submission of a Retail Impact Assessment (RIA) in both Policy DMD25 of the DMD and the Framework. However, a RIA is different to a sequential test. The lack of a RIA is not referred to by the Council within its reason for refusal. Therefore, I am not persuaded that the appellant has provided suitable justification for not following the established sequential approach. Paragraph 27 of the Framework establishes that, where an application fails to satisfy the sequential test, it should be refused.

34. The proposal is not within an existing centre and in the absence of a sequential test to show that this is the most appropriate site available in which to accommodate the development, the aim of directing retail development to established centres would be undermined. I am therefore unable to conclude that a more suitable site is not available.
35. As a result, if a permanent planning permission were granted without a sequential assessment or suitable justification for not following this approach, it could have an adverse impact on the vitality and viability of the Borough's town centres.
36. For the reasons above, I conclude that, in the absence of a sequential test, it is not certain that the proposal would not harm the vitality and viability of Enfield. It would therefore be contrary to Policies CP17 and CP18 of the CS, Policy DMD25 of the DMD and the Framework. Together these require that retail development is directed to town centres, and is accompanied by a sequential test.

#### *Flood risk*

37. The appeal site lies near to the Sadlers Mill stream/boundary ditch culvert. The application was accompanied by details of an inspection of the culvert in July 2016. However, it is not clear from the inspection report as to whether the condition was deemed to be acceptable.
38. The Environment Agency (EA) in its letter dated 23 March 2017 states that it requires the exact location (depth and distance from the building) and whether the condition of the culvert was deemed acceptable. Although it is clear from the information on the appellant's drawing 1HS-8F-SP2 where the entrance to the culvert is, there is no further information regarding its route and depth. I note in this respect that the Council's SuDs Officer, in his email of 7 April 2017 also requested that all drawings should have the run of the culvert on.
39. Furthermore, the EA also requires information as to whether the proposed extension would impart any loading on the culvert and, if so, whether the size and condition of the culvert would withstand the loading. My attention has not been directed to this requested information within the documentation provided. Without this information, I share the EA's concern that the potential for the proposal to cause an increase in on or offsite flood risk is also unknown.
40. The Council also refused the application as it considered insufficient information had been submitted in relation to managing surface water. The appellant has submitted details of an email exchange with the Council's SuDs officer (SO) which took place after the decision had been made on the planning application. While some solutions have been agreed with the officer, I note that the SO still requires areas, cross sections and specifications of the agreed solutions. Furthermore, the SO reinforces the fact that details regarding the culvert are missing. Given the amount of detail that is still required to be submitted and the necessary assessment of that detail, I am not convinced that a planning condition could be reasonably imposed to require the detail to be submitted.
41. For the reasons above, I am not persuaded that sufficient detail has been submitted to ensure that the proposals would not lead to an increase in flood risk, on or off the site. It would therefore be contrary to Policy CP28 of the Core Strategy and Policies DMD59, DMD60 and DMD61 of the DMD. These

require that development avoids and reduces the risk of flooding and not increase risks elsewhere.

*Safe and suitable access*

42. There is no dispute between the parties that the proposed number of parking spaces would be acceptable. The Council's objection relates to the lack of detail within the proposed parking layout. However, the appellants drawing 1HS-8F-P02 shows the ten parking spaces to the rear of the proposed extension clearly split between residential and commercial car parking spaces. Nevertheless, the lack of detail means it is not clear that there would be sufficient provision of disabled parking spaces.
43. The drawing shows a disabled parking space allocated at the front of the site. However, this would be in the form of a layby which would also act as drop off/pick up point, and potentially also acting as a servicing area for the retail element of the scheme. The lack of a permanent disabled car parking space would be contrary to policy 45 of the DMD which requires that all new development must be designed to be fully accessible for all mobility requirements.
44. The TS states that servicing of the development will take place either from the front layby or the rear service yard. Although the Council suggest servicing from the front layby would not be appropriate, it provides no details of its concerns in this respect.
45. A tracking plan demonstrates that a large vehicle (either servicing or fire tender) would be able to enter and leave the site in a forward gear. However, what is not clear is whether two way traffic, particularly when a larger vehicle would be using the road, would be able to use the access road, which at its narrowest point would be only 4.3 metres. The total distance between the building and the northern boundary of the appeal site would be 5.4 metres. However, this measurement would include a pedestrian walkway. As a result, there would be considerable potential for conflict between pedestrians and vehicles using the access road, and vehicles exiting and entering the site.
46. The appellant states that Policy DMD47 part (1) requires that a pedestrian approach shall be provided in accordance with the requirements of Part M4 of the Approved Document and Requirements M4(2) and M4(3) are "Optional Requirements" as defined in the Building Regulations [2014]. However, I have found that pedestrian access within the site would not be safe whether for disabled persons or otherwise.
47. The proposal includes no details of how construction traffic will be managed. However, I note that such detail would only be required under Policy DMD48 of the DMD in relation to major development. I am not persuaded that the proposals constitute major development, and such detail could be secured by condition. In addition the provision of electric car charging points could also be the subject of a condition if the appeal were allowed.
48. For the reasons above I conclude that, the proposal would not provide safe and suitable access for all people. The proposal would therefore be contrary to Policies 6.3, 6.10, 6.13 of the London Plan 2016, Policies CP25, and CP24, of the CS and Policies DMD45 and DMD47 of the DMD. Together these require that development does not adversely affect safety on the transport network,

provides high quality and safe and convenient access routes for pedestrians and parking for disabled persons.

### *Cycle parking*

49. The proposal would provide 18 cycle parking spaces for the residential aspect of the scheme and 15 spaces for the retail element, some of which would be provided in the form of Sheffield stands near to the entrance of each element of the scheme. In this respect therefore, the number of cycle parking spaces for the residential use would be in accordance with the standards set out in the London Plan 2016. Much of the cycle parking would be located within the basement and accessed via a lift, which the Council considers would not be convenient or attractive. Nonetheless, I have seen nothing to suggest that the cycle parking provision would not be secure, covered and available. The appellant also confirms that the lift would be of a geometry to accommodate a bicycle and passenger and it would therefore be accessible.
50. There is some dispute between the parties regarding the amount of cycle parking spaces required for the retail element of the scheme. If I were to take the Council's higher figure of a requirement for 18 cycle parking spaces, I am not convinced that a shortfall of only three spaces would be materially harmful, in this instance, given the overall levels of cycle spaces on the site.
51. For the reasons above I conclude that there would be an appropriate level of cycle parking. There would therefore be no conflict with Policy 6.9 of the London Plan 2016 which requires that development incorporates secure, integrated, convenient and accessible cycle parking facilities in line with the minimum standards.

### *Refuse storage*

52. The Council's concerns relating to refuse storage, ultimately relate to a lack of clarity in how these matters would be treated in the proposed development. The appellants drawing 1HS-8F-P02 shows an enclosure adjacent to the entrance to the appeal site for accommodating refuse and recycling bins for the residential units. The TS confirms that they would be located within 30 metres of the entrance to the residential units and within 12 metres of the site entrance, in accordance with the requirements of Manual for Streets 2007. The TS also confirms that refuse storage for the retail unit would be at the rear of the site and made by private contract.
53. However, the Council state that the bins should be located no more than 10 metres from the kerbside. The kerbside would be a distance further than the site entrance. It is not clear from the drawings submitted as to whether the location of the bins would meet this requirement. However, I am satisfied that such detail could reasonably be the subject of a condition were the appeal allowed.
54. For the reasons above I conclude that the proposal could accommodate appropriate refuse and recycling facilities subject to a suitably worded condition. There would therefore be no conflict with Policy DMD47 of the DMD which requires that development provides adequate, safe and functional provision for refuse collection.

## **Conclusion**

55. I have found that the proposal would provide acceptable cycle parking and refuse and recycling provision. This would not though outweigh the harm I have found in relation to character and appearance, living conditions, safe and suitable access to the site, and the approach to the provision of retail in the Borough.
56. For the reasons above, and having regard to all other matters raised I conclude that the appeal should be dismissed.

*Zoe Raygen*

INSPECTOR