The Planning Inspectorate

Appeal Decision

Site visit made on 4 July 2019

by D J Barnes MBA BSc(Hons) DipTP MRTPI

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

Decision date: 29th July 2019

Appeal Ref: APP/G5750/W/18/3213954
109 Earlham Grove, Forest Gate, London E7 9AN

- 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 Ashok Khimji against the decision of the Council of the London Borough of Newham.
- The application Ref 18/01632/FUL, dated 7 June 2018, was refused by notice dated 12 September 2018.
- The development proposed is the demolition of an existing garage and construction of 4 No. flats and 1 No. 3 bedroom bungalow.

Decision

1. The appeal is dismissed.

Procedural Matters

2. In December 2018 the Newham Local Plan was formally adopted and this has now superseded the London Borough of Newham Local Plan: Core Strategy and Local Plan: Detailed Sites and Policies Development Plan Document. The draft policies from the Local Plan were referred to in the Council's decision notice and the adoption of the Local Plan raises no new matters. Further, limited weight is given to the emerging London Plan which has yet to be adopted.

Main Issues

3. It is considered that the main issues are the effects of the proposed development on (a) the character and appearance of the surrounding area; (b) the living standards of the future occupiers and (c) the living conditions of the occupiers of neighbouring properties.

Reasons

Character and Appearance

4. Planning permission has been granted at the appeal property for the demolition of an existing garage located to side of 109 Earlham Grove and the erection of a 2-storey building, with accommodation within the roofspace, containing 3 flats (Ref 17/01620/FUL). The proposed development includes a similar scheme but the apartment building would have basement accommodation to provide an additional flat and a different internal layout.

5. In addition to the proposed flats, the appeal scheme includes the demolition of an existing outbuilding and its replacement by a single storey dwelling with a larger footprint. A previous appeal scheme included a similar loss of the

outbuilding (Ref APP/G5750/W/16/3141609) and the erection of a 2-storey building accommodating 4 flats. This previous appeal was dismissed principally because the proposal would have caused harm to the character and appearance of the area and the failure to provided acceptable living conditions for future occupiers. In addition to the number of residential units, there are other differences between the current and previous appeal schemes, including the single storey height of the proposed dwelling within the rear garden.

6. The existing outbuilding is a large single storey structure which is used for storage. Its design is simple and utilitarian echoing the appearance of other outbuildings which could be seen, mainly from the footbridge across the railway line and, to a lesser extent, Forest Lane. In contrast, and as would be seen from the footbridge, the appeal scheme would result in a larger building with a residential character and appearance, mainly because of the large patio style openings, with a canopy above, located within the rear elevation and the chimney. The front elevation would have a bay window and front door, with a canopy above, which would be seen from the rear windows of neighbouring properties, including the host dwelling and proposed apartment building.

7. Although possessing a larger footprint than the outbuilding, the erection of the proposed dwelling would not result in the loss of any vegetation, in particular the trees which are a feature of other rear gardens. However, the design of the proposed dwelling would be at odds with the utilitarian appearance of the other outbuildings within rear gardens.

8. Further, the proposed dwelling would be sited in an incongruous location relative to the predominantly residential character of the surrounding area. This comprises dwellings fronting roads and, in the case of properties along the north side of Earlham Grove, possessing long rear gardens which collectively possess an open and verdant character and appearance. The size of the proposed dwelling, the indicated retention of the other outbuilding and the further sub-division of the existing garden beyond what has been approved to create amenity spaces would combine to diminish the open appearance of the rear garden and its positive contribution to the collective character of the adjoining rear gardens, especially when viewed from the footbridge.

9. Reference has been made by the appellant to other schemes where residential development has occurred within the rear garden, including at Alder Court, formally 93-95 Earlham Grove. Having been able to view this nearby scheme I concur with the previous Inspector's assessment of the housing development at Alder Court being of a different character to the erection of a single building within the rear garden of the property. Further, the detailed planning circumstances of these other schemes have not been provided. For these reasons, only limited weight is given to these other schemes in the determination of this appeal.

10. On this issue it is concluded that the proposed development would cause unacceptable harm to the character and appearance of the surrounding area and, as such, it would conflict with Policies 3.5, 7.1, 7.4 and 7.6 of the London Plan (LP) and Policies SP1, SP3, SP8 and H1 of the Newham Local Plan (NLP). Amongst other matters these policies seek to ensure that new development is of a high design quality and that it has regard to its context and the distinctive character of an area. These policies echo the National Planning Policy

Framework (the Framework) which seeks high quality design that adds to the overall quality of an area and responds to its local character.

11. For this main issue, no specific conflict with NLP Policies S1, S6, SP2 and SP5 have been identified because they concern strategic spatial matters, healthy neighbourhoods and heritage assets rather than detailed design considerations. Neither has a conflict been identified with LP Policies 7.2, 7.3 and 7.5 concerning matters relating to an inclusive environment, designing out crime and the public realm.

Living Standards for Future Occupiers

12. As part of the approved scheme, bedroom and bathroom accommodation was provided within the roofspace for Flat 3. Although, the approved Flat 3 would have limited headroom in places due to the pitched roof, the Council did not object to the standard of the accommodation. This appeal scheme retains the principle of accommodation within the roofspace for Flat 4 but with a reconfigured layout when compared to approved Flat 3.

13. The proposed kitchen for Flat 4 is indicated to be located within an area where the height is below normally accepted standard for habitation. Although no cross sections have been provided to demonstrate the kitchen could be satisfactorily provided, I am satisfied that the size of the available floor area available within the roofspace could be suitably laid out to provide living and kitchen accommodation. Further, the proposed hallway and bathroom for Flat 4 would be in the area with the greatest headroom and would not result in a poor standard of accommodation.

14. To the rear of the proposed apartment building at basement level a patio style amenity area space has been identified for Flat 1. The previous appeal did not include a basement level amenity space of the type being proposed. This garden area would be sited close to the shared boundary which, in this location, is defined by a wall of around 2 metres in height. The Council claims that this proposed amenity space would not receive adequate amounts of sun and day light because of its orientation and the siting of the proposed apartment building to the south.

15. At the time of the morning site visit, the area proposed for the amenity space was partially in shade due to the boundary wall. By reason of its orientation and bulk, I share the Council's concerns that the proposed building would have the potential to increase the overshadowing of the patio for a significant part of the day reducing its quality as a useable area of amenity space. However, this matter alone would not amount to a sufficient reason for the appeal to fail because there would still be some sun and day light reaching this space.

16. Although not a common arrangement, the sub-division of the existing rear garden would provide the future occupiers of the proposed flats and dwelling with their own private amenity space. The size of the individual amenity spaces would be meaningful and sufficient to meet the Council's standards. Access to these spaces would be readily available to the occupiers. There would not be a conflict with NLP Policy H1 concerning adequate external space for housing schemes.

17. Reference is made in the Council's reasons for refusal to potential loss of privacy for future occupiers. There is a lack of clarity about the Council's

potential concern. Based upon the proposed dwelling being single storey and the separation distances between the existing and proposed properties fronting Earlham Grove, no unacceptable loss of privacy to the future occupiers would be caused by overlooking. Further, the enclosure of the private amenity spaces would provide privacy for these areas.

18. No details have been provided about the access arrangements to the proposed flats within the rear garden for the previous appeal. For this appeal scheme, access to the dwelling within the rear garden would be through the proposed apartment building. For reasons of good design, it would normally be expected that a dwelling to the rear of a property would have an independent access. Accordingly, I share the Council's concerns that the proposed means of access to an independent dwelling would neither be legible nor represent good design.

19. Although some of the matters which have been assessed do not cause harm, they are significantly outweighed by the poor quality of access to the proposed dwelling and the quality of the amenity space for Flat 1. It is, therefore, concluded that the proposed development would not provide satisfactory living standards for the future occupiers of the proposed development and, as such, it would conflict with LP Policies 3.5 and 7.6, NLP Policies SP3, SP8 and H1 and the Housing Supplementary Planning Guidance. Amongst other matters these policies and guidance refer to high quality development which achieves a high standard of access, egress and circulation for all. Further, there would also be a conflict with the Framework which requires a high standard of amenity for existing and future users.

20. For this main issue, no specific conflict with NLP Policies S1, S6, SP1 and SP2 has been identified because they concern strategic spatial matters and healthy neighbourhoods rather than living standards. Neither has a conflict been identified with LP Policies 7.1, 7.2, 7.3, 7.4 and 7.5 concerning an inclusive environment, designing out crime, local character and public realm matters.

Living Conditions of the Occupiers of Neighbouring Properties

21. The Council has raised concerns regarding noise and disturbance associated with the proposed dwelling within the context of the occupiers of neighbouring properties enjoying the use of their gardens. However, the property is located adjacent to a busy railway line and the previous Inspector made an assessment about noise and disturbance from the then proposed flats. In the absence of any specific evidence since the previous appeal decision, there are no reasons to depart from the assessment of the previous Inspector. This assessment is reinforced by the likely lower level of activity associated with the domestic occupation of a single dwelling when compared to 4 flats.

22. For the reasons given, it is concluded that the proposed development would not cause unacceptable harm to the living conditions of the neighbouring occupiers by reason of noise and disturbance, and, as such, it would not conflict with LP Policy 7.15 and NLP Policy SP8 which require development to achieve good neighbourliness and avoid significant adverse noise impacts. These policies are echoed in the Framework where a high standard of amenity for existing and future users is sought as part of developments. No specific conflict with NLP Policies S1, S2, SP1 and SP2 have been identified because they do not address living conditions matters. For the same reason, a conflict has not been identified with LP Policies 7.1, 7.3, 7.4 and 7.5.

Conclusion

23. Although the proposed development would provide additional residential accommodation and would not cause unacceptable harm to the living conditions of the occupiers of neighbouring properties, these matters are demonstrably outweighed by the significant harm which would be caused to the character and appearance of the surrounding area and the living standards of the future occupiers. Accordingly, it is concluded that this appeal should be dismissed.

D J Barnes

INSPECTOR