



Appeal Decision

Site visit made on 8 August 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 17th September 2019

Appeal Ref: APP/B5480/W/19/3226538

61 Eastern Road, Romford RM1 3PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Salma Khodabaksh against the decision of the Council of the London Borough of Havering.
 - The application Ref P1220.18, dated 8 October 2018, was refused by notice dated 13 February 2019.
 - The application sought planning permission for a ground floor rear and side extension and associated works without complying with a condition attached to planning permission Ref P0617.14, dated 29 July 2014.
 - The condition in dispute is No 6 which states that: *The roof area of the extension hereby permitted shall not be used as a balcony, roof garden or similar amenity area without the grant of further specific permission from the Local Planning Authority.*
 - The reason given for the condition is: *In the interests of the amenity of the occupiers of neighbouring dwelling, and in order that the development accords with the Development Control Policies Development Plan Document Policy DC61.*
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Decision

1. The appeal is dismissed.

Procedural Matters and Background

2. The appeal proposal seeks variation of condition 6 of planning permission Ref P0617.14 to use the flat roof of the existing single-storey rear extension as a roof garden in connection with the day nursery between 0800 and 1700 Monday to Friday with screening, canopy and external alterations.
3. The appellant advised on their application form that the development had already started and had been completed at the time they made the application. External alterations have been implemented consisting of the replacement of a first-floor window with a door on the rear elevation of the building to provide access to the flat roof, which has been laid with artificial grass. The canopy including supporting columns has also been constructed. At the time of my site visit there was no boundary treatment in place, with the wooden fence implemented having been removed following enforcement. I have therefore determined the appeal on the basis that that the development sought has effectively been carried out.

Main Issues

4. The main issues in this appeal are whether or not the condition is necessary having regard to:
 - the living conditions of the occupiers of 59 Eastern Road (No 59), particularly as regards privacy, noise and disturbance; and
 - the character and appearance of the area.

Reasons

Living conditions

5. No 59 adjacent to the appeal property is a 2-storey residential property comprising 5 flats with accommodation in the roof space served by rear-facing dormer windows. It is separated from the appeal property by an access road. There are several windows serving the flats which face the side elevation of the appeal property at ground floor and first floor level.
6. The appeal property has few windows on its side elevation, and these are small and at high-level. The rear windows of the appeal property face towards the rear garden. There is therefore very limited overlooking from the nursery into the flats. The long rear garden of the nursery is used as a play area, and while there are views towards the windows of No 59 from the play area these would not result in unacceptable overlooking due to distance and the presence of boundary treatments.
7. While the appellant advises that variation of the condition would not increase the number of children at the property, it would introduce a new outside nursery area much closer to the side and rear windows of the flats at No 59 than the existing ground floor play area. The use in connection with the nursery would create noise from children, which would not be contained by an enclosed structure, and would cause a material increase in overlooking as there would be a close and fairly direct relationship with No 59's side and rear-facing windows and therefore a loss of privacy.
8. Further, due to the elevated position of the roof garden, there would be limited reduction of overlooking and noise by boundary treatments between the roof garden and the neighbouring flats. Taken all together, and notwithstanding that the proposed use of the roof garden would be restricted to times typically associated with weekday working hours, there would be an unacceptable degree of loss of privacy through overlooking and disturbance from the noise of children using the roof garden.
9. The appellant has suggested that more extensive screening could be provided with details approved by the Council. However, on the basis of the evidence before me and what I saw when inspecting the site, I am not convinced that such an arrangement could be sufficiently effective in diminishing noise and disturbance caused by an elevated external nursery area so close to neighbours.
10. While I note that there are separate statutory powers available to public bodies to deal with noise abatement and lack of suitable child supervision in nurseries, should they occur, Paragraph 170 of the National Planning Policy Framework

(the Framework) requires that planning decisions should prevent existing development from being adversely affected by unacceptable levels of noise.

11. For the above reasons, varying the condition would cause significant harm to the living conditions of neighbours, particularly as regards privacy, noise and disturbance. As such, it would be in conflict with Policy DC61 of the London Borough of Havering Core Strategy and Development Control Policies Development Plan Document (2008) (DPD) which seeks, amongst other objectives, to protect the living conditions of neighbours. It would also be in conflict with the Framework.

Character and appearance

12. Eastern Road in the vicinity of the appeal site is predominantly residential and characterised largely by 2-storey semi-detached houses fronting the street with rear projections of varied form and relatively long and narrow rear gardens or parking areas. Notwithstanding its commercial use as Fledgelings Day Nursery, the 2-storey semi-detached appeal property is of a similar appearance to the local built form in these respects.
13. The canopy is a modest flat-roofed open structure supported by 3 relatively slight wooden supports. It projects slightly from the rear of the first-floor of the building and is lower in height than the eaves of the adjacent pitched roofs of the appeal property. It also projects considerably less from the rear elevation of the semi-detached pair than the 2-storey projection of No 63 Eastern Road (No 63). For these reasons taken together, when seen in the context of the built form in which it is located, the canopy by reason of its siting and materials is not harmfully prominent or visually intrusive. Further, it does not appear as an incongruous addition due to the varied forms of rear projections, roof forms and pitches associated with the rear the appeal property and its neighbours.
14. The proposed screening would be of modest height, and its light design would be marked by the use of obscured glass. It would be broadly in line with the rear building line of the semi-detached pair, including the rear elevation of the 2-storey projection of No 63. Taking into account the mass and scale of the surrounding built form it would not appear prominent, incongruous or visually intrusive.
15. Therefore, varying the condition would not cause harm to the character and appearance of the area. As such, it would not be in conflict in this respect with Policy DC61 of the DPD which seeks, amongst other objectives, to protect the character and appearance of places. The avoidance of harm in this respect does not lead me to consider that the variation of the condition would be acceptable given my findings on the other main issue.

Other Matters

16. The appellant has said that the appeal proposal would make it easier for younger children to go outside directly from their first-floor room, rather than down the stairs to the rear garden. Further that there would be associated benefits to them of fresh air and sunlight, that it would assist them in being physically active, and would help them sleep better at night. I give these benefits limited weight as the children can in my view obtain such benefits reasonably easily by using the existing ground floor garden, and it does not

outweigh the significant harm that the appeal proposal would cause to the living conditions of neighbours.

Conclusion

17. Condition 6 is necessary to prevent significant harm to the living conditions of neighbours and the appeal is dismissed.

Andrew Walker

INSPECTOR