



Appeal Decision

Site visit made on 17 March 2020

by Christopher Butler BA(Hons) PG Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2020

Appeal Ref: APP/U5930/W/19/3237956

Land to the rear of 65-79 Roberts Road, Walthamstow E17 4LP.

- 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 Gradica of Gradica Properties Ltd against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 190648, dated 11 February 2019, was refused by notice dated 20 August 2019.
 - The development proposed is the demolition of existing single-storey garages and the erection of three two-storey dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i) the effect on the living conditions of:
 - a) Future occupiers, with particular regard to outlook, privacy, and private amenity space provision;
 - b) Neighbouring occupiers particularly in regard to the management of waste;
 - ii) Whether or not the development would achieve the highest standards of fire safety in regard to its overall design; and
 - iii) Whether or not the proposal would facilitate high-density car free sustainable development that would encourage walking, cycling and the use of public transport.

Reasons

Description of site

3. The main part of the appeal site is surrounded on all sides by the rear gardens of the two storey terrace properties fronting Roberts Road and the three storey flats adjoining the site in Chingford Road. The site presently accommodates a block of garages which are being used to store building materials and equipment. The remainder of the site is taken up by the access situated between Nos 63 and 65 Roberts Road and the open area to the fronts of the garages.

Proposed development

4. The appeal proposal seeks to redevelop the site for three two storey dwellings. One would be a 3 bedroom dwelling (House 1) that would be located in the northern portion of the site, whilst the other two ((House 2) and (House 3)) will be 2 bedroom dwellings located in the central portion and southern side of the site respectively. With the exception of the pedestrian and vehicular access and the area around the proposed waste/recycling store, service meters and bicycle store, which are all located south of House 3; and the pedestrian access located to the western side of the site, the majority of the site is taken up by the footprint of the development.

Living conditions - Future occupiers

5. The Council in its first reason for refusal, refers to the proposal being an overdevelopment of the site. It considers this arises from the developments overall built site coverage, design and scale, which result in a poor standard of accommodation in terms of outlook, privacy and the provision of private amenity space.
6. The Council and appellant agree that the proposal would exceed the minimum internal space standards as set out in Policy DM7 of the Waltham Forest Local Plan – Development Management Policies (DMP) 2013. Policy DM7 of the DMP sets out external amenity standards, which seek 50m² of private amenity space for each 1 or 2 bed dwelling and 60m² for a 3 bed dwelling.
7. Whilst the development provides private amenity space, these spaces fall substantially below the requirement specified in Policy DM7 of the DMP. The design of the development, which wraps around these private amenity spaces on three sides, when combined with the height and positioning of the 2 storey elements and the orientation of the site, provide a significant sense of enclosure that would overwhelm these areas making them feel cramped, oppressive and unwelcoming.
8. I acknowledge the site constraints, including its confined nature, and the context of the surrounding area, as well as the sites proximity to shops and services, which includes parks and green spaces. However, these factors do not overcome my concerns regarding the size, nature and usability of the private amenity space proposed.
9. Policy CS2 of the Waltham Forest Core Strategy (March 2012) (WFCS) seeks to improve housing quality and choice, whilst Policies CS13 and CS15 of the WFCS seek to promote health and wellbeing and well-designed buildings, places and spaces. Policy DM29 of the DMP sets design principles and amongst other criteria seeks to ensure high standards of urban design, whilst Policy DM32 of the DMP, amongst other criteria, seeks to ensure satisfactory amenity is afforded to the Council's residents, including acceptable outlook and privacy for the occupants of new habitable rooms.
10. The windows serving the ground floor living spaces to House 1 are located on the south and west facing elevations, with the upper floor windows located in the south facing elevation. The ground floor living space windows to Houses 2 and 3 are located on the north and west facing elevations, whilst the upper floor elevations of House 2 has habitable room windows located in the north and south, with House 3's first floor habitable room windows being located in

the north facing elevation. Although adjoining properties in Chingford Road (Hyh House and Highcroft Point) are set away from the common boundary with the development site, the rear of Hyh House is, nonetheless, situated between some 4.45 metres and 11 metres from this boundary, whilst Highcroft Point is positioned some 9 metres from the boundary.

11. I note that both the appellant and Council refer to the rear windows in Hyh House as serving predominantly kitchen and bathrooms, but there is no substantive evidence before me that none of these windows serve habitable rooms. Additionally, I note that both the appellant and Council agree that the rear windows in Highcroft Point serve bedrooms and kitchen spaces.
12. From such close proximity, I consider that the private amenity areas and windows serving the ground floor living area of the proposed development would be directly overlooked from the rear windows of Hyh House and Highcroft Point. Furthermore, the outlook from the proposed dwellings would be dominated by the built form of the development itself and the adjoining properties in Chingford Road, with Hyh House and Highcroft Point both being three storeys in height.
13. I appreciate that efforts have been made to design a development that meets the sites constraints, but due to the proximity of Hyh House and Highcroft point, the development would be dominated by a mass of built form in a way that I consider would be overbearing, oppressive and intrusive to the amenities of future occupiers of the development.
14. I acknowledge that gates and fencing, or other means of boundary enclosure, could be erected with a view to screening the development from external views. However, such enclosures would add to the sense these housing plots, and their private amenity areas, would be highly confined and would not overcome the perception of a loss of privacy, through overlooking. Furthermore, whatever the means of enclosure this would not overcome the overbearing, oppressive or intrusive effect that results from the proximity of adjoining development to the site.
15. Overall, the development would not meet the objectives of Policies CS2, CS13 or CS15 of the WFCS or Policies DM7, DM29 or DM32 of the DMP, which amongst other objective seek to ensure high quality design that makes a positive contribution to the urban environment, as well as improving the health and wellbeing of the Council's residents by ensuring satisfactory amenity is provided for future occupiers of all new development.
16. I note the appellant's reference to the London Plan Housing Supplementary Planning Guidance (SPG), which indicates a minimum of 5m² of private outdoor space should be provided for 1-2 person dwellings, with an extra 1m² provided for each additional occupant. However, I also note this document indicates that *"Provision for outdoor gardens should be set in the context of local standards."* Irrespective of this, the SPG provides guidance only and for the reasons outlined above, I afford it limited weight in this instance.

Amenities of neighbouring occupiers

17. The Council's third ground of refusal relates to its concerns related to waste collection management, without harming the amenity and wellbeing of neighbouring occupiers; and ii) how surface water drainage from the site would

be sufficiently dealt with. In regard to the latter, I note that the Council's Appeal Statement acknowledges surface water drainage "*...could be suitably dealt with by conditions.*" As such the Council have not pursued this part of its third reason for refusal and reference to Policy CS4 of the WFCS and DM34 of the DMP are therefore irrelevant, insofar as they relate to water and flood risk. On the basis of the evidence before me, I agree with the Council that details of surface water drainage could be adequately dealt with through the use of conditions.

18. Turning to waste collection management, the Council's Appeal Statement clarifies its concerns arise from the proposed location of the bins on collection day, but otherwise "*...the position of waste storage was considered acceptable...*" The location of the waste on collection day is shown to be near the entrance of the site, close to the side elevations of Nos. 63 & 65 Roberts Road, and the Council considers that this would cause harm to the amenity of these occupiers as a result of noise and smell.
19. Policies CS6 of the WFCS relates to the promotion of sustainable waste management and recycling, and seeks to ensure that new development provides accessible, adequate and well-designed internal and external storage facilities for residual waste and recycling. Bearing the above in mind, together with the fact that the Council has not clarified its concerns in this regard, nor has it provided any evidence that supports its position in terms of how the location of the bins on collection day will harm the amenities of the neighbouring occupiers arising from noise and smell, I do not agree that this proposal would conflict with Policy CS6 of the WFCS.
20. Waste will only be placed near the entrance of the site, close to Nos. 63 & 65 Roberts Road, on waste collection day and at other times would be stored in the waste stores located elsewhere within the site. I note that neither the Council's Environmental Health nor Waste Strategy Sections raised objections to the proposal, subject to the imposition of appropriate conditions.
21. On the basis of the evidence before me, and for the limited period that the waste is presented in this location on the waste collection day, I am not persuaded that harm to the amenities of adjoining occupiers, including from noise and smell, contrary to Policies CS2, CS13 and CS15 of the WFCS and Policies DM7, DM29 and DM32 of the DMP would occur.

Fire Safety

22. The Council's second reason for refusal relates to fire safety and alleges that the appellant has failed to demonstrate how the development would achieve the highest standards of fire safety in regard to its design. This includes in terms of providing suitable access and equipment for firefighting appropriate for the size and use of the development. The Council quotes policy D11 of the emerging London Plan (eLP) in this regard and considers that given the backland location of the site, some level of detail with regards to the fire safety should have been provided.
23. In December 2019 the Mayor submitted his 'Intend to Publish' version of the emerging London Plan to the Secretary of State for consideration. In light of the Mayor's opposition to some of the key recommendations, policies could change. However, these concerns did not include Policy D11 (Fire Safety) and

as such due to the advanced stage it has reached in the process I afford Policy D11 significant weight.

24. Policy D11 of the eLP only requires proposals for major development to submit a Fire Statement. However, this development does not amount to a 'Major Development' in planning terms¹. Therefore, it does not meet the requirement within Policy D11 requiring the submission of a Fire Statement with the application. I note that the development was the subject of significant pre-application consultation with the Council, where Council Officers gave advice on a number of matters, not least the design of the development. The Council was clearly aware of Policy D11 in the eLP and it is reasonable to assume that this formed part of its considerations when commenting at the pre-application advice stage.
25. Additionally, I note that the Council consulted with the London Fire Brigade (LFB) during the course of its consideration of the application. The Council's Committee Report states the LFB comments as "*No objections to the proposal. Recommended the installation of a sprinkler system.*" Bearing in mind these comments and having considered the evidence before me, I am not persuaded that the appellant has failed to demonstrate appropriately how the development would achieve the highest standards of fire safety. Therefore, the development does not fall contrary to Policy D11 of the eLP.

Whether or not the proposal would facilitate high-density car free sustainable development

26. The Council seeks to promote sustainable travel through a number of measures, including in certain instances car-free development. Policies CS7 of the WFCs, Policy DM16 of the DMP and Policy T6 of the eLP support this approach. A draft of a planning obligation² (s106) has been submitted with the appeal, which seeks to secure the development as car-free. The s106 seeks to achieve this by preventing, with exceptions, occupiers from purchasing or otherwise procuring a resident's parking permit for a residents parking bay within the Council's controlled parking zones.
27. Case Law indicates that problems can arise with the use of such s106 terms in regard to whether such an obligation amounts to a binding obligation rather than a personal undertaking, affecting enforceability.³ However, I note that the Council is an Authority where the provisions of Section 16 of the Greater London Council (General Powers) Act 1974 are engaged. This can be an effective means of securing car-free development due to the wider wording of that section, which does not require a restriction on land, rather the undertaking or agreement secured relates to a 'connection' with the land/property. As the s106 includes Section 16 powers I consider that it can be used to secure the 'car-free' development proposed within controlled parking zones operated by the Council.
28. It is clear that car-free development, is necessary to the acceptability of the development, is directly related to it, and is fairly related in scale and kind. As such it would accord with the provisions of Regulation 122 of the Community

¹ As defined by the Town and Country Planning (Development Management Procedure) Order 2015 (as amended)

² Legal Agreement submitted pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).

³ See related case law, including *Westminster City Council v SSCLG & Mrs Marilyn Acons* [2013] EWHC 690 (Admin) and the later *R (oao Khodari) v Royal Borough of Kensington and Chelsea & Cedarpark Holdings Inc* [2017] EWCA Civ 333

Infrastructure Levy Regulations 2010, and the tests for planning obligations set out in the Framework. However, Annexe N of the *Procedural Guidance - Planning Appeals – England (January 2020)* is clear that any form of planning obligation should be submitted with the appeal documentation. It indicates an executed and certified copy of the s106 must be received no later than 7 weeks from the start date of the appeal.

29. The s106 submitted is in draft and is not an executed and certified copy. Additionally, I note that the definition of “Application” within the definitions section of the s106 has not been fully completed. As such the s106 is incomplete and without any mechanism before me, which would secure the car-free development, I am not satisfied that the proposed development would make adequate provision in this regard and therefore the development, as it stands, would not comply with Policies CS7 of the WFCS, Policy DM16 of the DMP and Policy T6 of the eLP.

Planning Balance and Conclusion

30. The proposed dwellings would have adequate internal space. Additionally, I am satisfied that the development would comply with policy D11 of the eLP in terms of fire safety. Furthermore, no harm to the amenities of occupiers of Nos 63 and 65 Roberts Road, arising from noise or smell, would occur as a result of where waste is presented for collection on waste collection day.
31. Irrespective of the above, the private amenity space provision related to each proposed dwelling fall substantially below the requirement set out in Policy DM7 of the DMP. These spaces are highly confined and dominated by the development itself. They would also be in close proximity to neighbouring residential properties in Hyh House and Highcroft Point and loss of privacy resulting from overlooking would occur. As such I consider that these private amenity spaces would be substandard, oppressive, unwelcoming and unlikely to be used.
32. In addition, the built form of the proposed development itself, together with the height and proximity of adjoining dwellings, especially those in Hyh House and Highcroft Point, would mean that the development is dominated by a mass of built form that would be overbearing, oppressive and intrusive.
33. When considered in combination these concerns lead me to conclude that the proposal would amount to an overdevelopment of the plot, which would be detrimental to the amenities of its future occupiers, contrary to Policy CS2, CS13 and CS15 of the WFCS and Policies DM7, DM29 and DM32 of the DMP. These Policies, amongst other criteria, seek to ensure new housing development meets the high quality design that makes a positive contribution to the urban environment, as well as improving the health and wellbeing of the Council’s residents by ensuring satisfactory amenity is provided for its future occupiers of all new development, (including by ensuring sufficient and useable private amenity space is provided within the curtilage of development).
34. Furthermore, in the absence of any mechanism securing the car-free development, I am not satisfied that the proposed development would make adequate provision in this regard and the development fails to comply with Policies CS7 of the WFCS, Policy DM16 of the DMP and Policy T6 of the eLP.

35. For the above reasons, and considering all other matters raised, I conclude that the appeal should be dismissed.

Christopher Butler

INSPECTOR