
Appeal Decision

by D J Barnes MBA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2020

Appeal Ref: APP/U5930/D/20/3244866

74 Lytton Road, Leytonstone E11 1JH

- 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 Alex Hutson against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 193301, dated 5 October 2019, was refused by notice dated 17 December 2019.
 - The development proposed is the erection of a single storey rear infill extension.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey rear infill extension at 74 Lytton Road, Leytonstone E11 1JH in accordance with the terms of the application, Ref 193301, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1416/158/LP and 1416/158/SK01 Revision 2.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Procedural Matter

2. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available, supplemented by additional evidence supplied by the appellant and confirmed as being accurate by the Council. Both the appellant and the Council were given an opportunity to provide comments on this approach.

Main Issue

3. It is considered that the main issue is the effect of the proposed development on the living conditions of the occupiers of 72 Lytton Road, specifically by reason of outlook.

Reasons

4. The appeal property is a mid-terrace dwelling with a 2-storey outrigger whose side elevation is sited away from the shared boundary with 72 Lytton Road. The proposed development includes the erection of a single storey rear extension which would substantially occupy the gap between the side elevation of the outrigger and the shared boundary. The eaves height of the proposed extension adjacent to the shared boundary would be around 2.5 metres with a mono pitched roof sloping away from No. 72. Its overall length would be the same as the outrigger.
5. There is a 2 storey outrigger to the rear of No. 72 with a similar gap between its flank wall and the shared boundary with the property. From the kitchen windows within the flank wall of the outrigger mean the occupiers of No. 72 have an outlook towards the side elevation of the appeal property's outrigger. Within the rear elevation of No. 72 is a glazed door associated with a dining room. The gap between the outriggers provides an outlook from the door towards the rear gardens.
6. At ground floor level, the proposed extension's side elevation would be sited adjacent to the shared boundary with No. 72 thereby reducing the existing gap between the outriggers of these neighbouring properties. By reason of siting, massing and height, the proposed extension's flank wall would create a tunnelling effect associated with the outlook from the rear door of No. 72. Further, the outlook from the kitchen windows of No. 72 would be visually dominated by the proposed flank wall and the sloping roof of the appeal scheme. Although not to the same extent, these concerns would still arise even if the eaves height of the proposed extension was reduced as has been suggested by the Council.
7. For these reasons, the proposed development would fail to accord with Policies DM4 and DM32 of the Development Management Policies Local Plan which, amongst other matters, require development to maintain the outlook for existing occupants and for residential extensions to protect the occupiers of properties nearby from suffering any excessive loss of residential amenity. These outlook matters are echoed in the Council's Supplementary Planning Document: *Residential Extensions and Alterations*.
8. However, prior approval has been granted by the Council for the erection of a single storey infill extension that would substantially occupy the same site as the proposed development (Ref 192776). This granted scheme would be circa 0.9 metres shorter length than the proposed extension but with a higher eaves level adjacent to the shared boundary.
9. Although of differing dimensions to the proposed development, the prior approval scheme would deliver a similar level of living accommodation for the appellant as the proposed development. Accordingly, it is judged that with the granting of prior approval the potential for this other scheme to be erected to provide additional living accommodation represents a real and credible fallback position in the assessment of this appeal.
10. As with the proposed development, the siting, height and massing of the prior approval scheme would affect the outlook of the occupiers of No. 72 from their dining room's door and kitchen windows. However, although the its length would be shorter than the proposed development, the siting, massing and

eaves height of the prior approval scheme's side elevation would result in a greater tunnelling effect associated with outlook from the dining room's door when compared to the appeal scheme. Further, when compared to the appeal scheme, because of its siting, massing and height the flank wall of the prior approval scheme would be a more visually dominant form of development in the outlook from both the door and the kitchen windows of No. 72.

11. Statute requires that a decision for an application, and by extension an appeal, for planning permission must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. The real and credible fallback position associated with the granting of the prior approval scheme is such a material consideration in the determination of this appeal.
12. For the reasons given, the proposed development's effect on the living conditions of the occupiers of No. 72, specifically by reason of outlook, would be less than the prior approval scheme's impact. This material consideration should be given substantial weight in the overall planning balance and indicates to me that a decision other than in accordance with the development plan is appropriate in this specific case. Accordingly, this leads to the conclusion that this appeal should succeed.

Conditions

13. The Council has suggested several conditions in the event this appeal succeeds which have been assessed against the tests in the National Planning Policy Framework and the Planning Practice Guidance. In addition to the standard time condition for implementation, conditions suggested are for the proposed development to be erected in external materials which match those of the host property and for the extension to be erected in accordance with the approved plans. These conditions are necessary to provide certainty about the development being allowed, including the eaves height; to maintain the character and appearance of the property and surrounding area and to ensure the living conditions of the occupiers of No. 72 are maintained.

Conclusion

14. For the reasons given, it is concluded that this appeal should be allowed.

D J Barnes

INSPECTOR