



Appeal Decision

Site visit made on 7 October 2020

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

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

Decision date:

Appeal Ref: APP/U5930/W/20/3250156

23 Langthorne Road, Leytonstone E11 4HL

- 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. M Kay (Landcore) against the decision of the London Borough of Waltham Forest.
 - The application Ref 193475, dated 16 October 2019, was refused by notice dated 17 January 2020.
 - The development proposed is the excavation of basement to facilitate the conversion of 1 x 2 self-contained unit to 2 x 1 bedroom self-contained units and retention of existing 1 x 3 bedroom self-contained unit. Alteration to site to include additional cycle storage and refuse facilities provisions.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the development from the Council's decision notice as this more accurately describes the individual components of the proposal.
3. In their Statement of Case (SoC) at Appendices 11 and 12, the applicant has submitted amended plans¹ showing two additional options and has sought that I consider these as part of the appeal. It is unclear which option the appellant seeks that I am to make my decision upon, however the main differences from the refused application to the options presented in the amended plans show different ways of facilitating potential waste and cycle storage. In general, the appeal process is not the appropriate place to evolve the scheme; and the scheme that is considered at appeal ought to be the same one that was considered by the Council. There is no evidence that the amended plans have been subject to any form of public consultation. In accordance with the 'Wheatcroft Principles²,' it would not be appropriate to consider these amended plans within my decision as the acceptance of such would deprive those who should have been consulted on the changed development or the opportunity of such consultation. As such, I will base my decision solely upon the plans that were assessed by the Council during the original planning determination.

¹ 'Part extension and sub-division of dwellings As Proposed' Drawing No 19-1357-02D; and 'Part extension and sub-division of dwellings As Proposed' Drawing No 19-1357-02E. Both plans dated July 19 and drawn by sub rosa architecture.

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

4. The applicant in Appendix 3 of their SoC has submitted a Daylight and Sunlight Study³ (DSS) in order to provide further clarification with regards to Reason for Refusal No.1 which concerns loss of light. In accordance with the 'Wheatcroft Principles,' this further information submitted by the appellant provides additional clarification to a main issue and does not result in changes to the scheme. The Council have had the opportunity to review this report and have provided further comment on this new information in their SoC. I find that the acceptance of this further information would be appropriate and not deprive those who should have been consulted or the opportunity of such consultation. As such, I will accept this further information and will base my decision upon it.
5. The Council in their reason for refusal No.1 state that the proposal would result in a cramped living environment, however the Council's concerns only refer to the levels of light, outlook and sense of enclosure for the proposed apartment. It is acknowledged by the Council in the Officer's Report that the proposed scheme would meet the Policy DM7 of the Waltham Forest Local Plan Development Management Policies 2013 (DMP) and the Nationally Described Space Standards in terms of Gross Internal Area, and as such I will not progress the issue of 'cramped living environment' any further within this letter.

Main Issues

6. The main issues are:
 - the effect of the proposed development upon the living conditions of the future occupants in terms of outlook, and access to daylight/sunlight;
 - the provision of adequate bin storage and the resultant effect upon the character and appearance of the street scene and to the living conditions of neighbouring residents in terms of health; and
 - The provision of adequate cycle storage to cater for the proposed development.

Reasons

Living conditions of future occupants

7. The proposed Flat 3 gains its main entrance via a stairwell from the communal hallway where the entire flat is at basement level. The proposed flat would gain natural light via an enlarged lightwell to the front⁴ and rear which form a courtyard and a smaller secondary source of light from a rooflight to the living area.
8. I have been referred to Policy DM7 of the DMP which seeks that for any conversions of properties, that the external amenity space should be well-designed, appropriately located, and useable. This policy is also in line with Policy 7.6 of the London Plan 2016 and its Housing Supplementary Planning Document (SPD) which gives further support for new residential developments which ensure adequate living conditions with considerations given to outlook, lighting and overshadowing.

³ By Right of Light Consulting, Dated 5 March 2020

⁴ According to both parties the lightwell to the front has planning permission as per Council Ref: 161735

9. The appellant's DSS contains a numerical assessment of daylight/sunlight and overshadowing impact and is based on the Building Research Establishment (BRE) publication '*Site layout planning for daylight and sunlight*.' This is cited as being an appropriate basis for assessment in the SPD. The BRE guidance is not itself policy, and acknowledges that the criterion and guidance are to be applied flexibly and to help rather than constrain design. The numerical guidelines and technical advice in the BRE publication are purely advisory and should be considered in the context of other site layout constraints.
10. The DSS shows the level of direct sky light to the proposed habitable rooms of the dwelling, where the majority of rooms have only a small amount of direct sky light which is limited to the close proximity of the windows with much of the proposed flat requiring to be artificially lit. The DSS also notes that none of the private amenity spaces receive at least 2 hours of sunlight on 21st March which fails to meet the recommended guidance. The author of the DSS allows for this dispensation because 64% of the main communal amenity space achieves a level of sunlight for 2 hours, which is greater than as recommended by the BRE guidance.
11. I acknowledge the advice with regards to mitigatory factors such as painting the walls and how the space is decorated in order to increase the perception of light. Whilst helpful, these suggestions do not successfully mitigate the lack of appropriate light levels in which the DSS demonstrates the private amenity spaces do not achieve. When compiled with the subterranean environment where access to sky could only be achieved at oblique angles, and would be further eroded by the proposed metal balustrading, the proposed scheme would have an unacceptable sense of enclosure that would give an oppressive experience. The lack of appropriate outlook for future occupants would give a poor standard of living conditions. I acknowledge the communal garden space which does have adequate light levels, however this is not private amenity space for the proposed flat and would not provide adequate dispensation for the inadequacy of the private amenity space.
12. I also note comments in the applicant's statement with regards to the differences in council judgement regarding outlook, and light levels with the proposed courtyard, given that it was an acceptable extension that complied with planning policy for part of the ground floor flat. The applicant questions the lack of transparency in Council decision making because the courtyard is now judged as being unacceptable because under the proposal it would be part of a separate unit of accommodation. I find the Council's judgement in this respect very logical, the situations are clearly different when considering the use of the courtyard as previously approved would be ancillary to the use of the existing amenity and floorspace of the ground floor flat, rather than the sole private space of Flat 3 as under the proposed scheme.
13. The appellant's statement includes reference to an appeal decision⁵ where a 1.23 metres depth of outlook was seen to be unsatisfactory and that the improvement of this depth to 3 metres made the scheme approvable by the London Borough of Southwark⁶. There is also reference to an appeal⁷ in the London Borough of Bromley where an Inspector considered that a 4 metre depth for a studio flat would achieve an acceptable outlook. I do not agree that

⁵ Appeal Ref: APP/A5840/W/16/3158547

⁶ London Borough of Southwark Planning Ref No:17/AP/4193

⁷ Appeal Ref: APP/G5180/W/18/3215729

these cases are analogous to the appeal site and that because a certain depth of garden can achieve a suitable outlook means that the appeal site would also be suitable. I also note that in both these cases concerned the loss of outlook and did not consider elements of overshadowing, enclosure and loss of daylight which were considered acceptable as opposed to the current scheme. I do not consider these cases analogous to the appeal site and do not assist in providing justification for the proposal.

14. Consequently, in conclusion on this matter the proposed scheme would fail to achieve sufficient living conditions, by reason of outlook, and access to daylight/sunlight. In turn, the proposed apartment would therefore be contrary to Policy DM7 of the DMP and Policies 3.5 and 7.6 of the London Plan which supported by the Housing SPD seeks appropriate quality and design of new residential accommodation to give a satisfactory living environment for future residents.
15. Policy CS2 of the Waltham Forest Core Strategy (CS) and Policy DM29 of the DMP are referenced in the Reason for Refusal relating to the living conditions of the proposed scheme, however these policies relate to strategic principles regarding housing delivery and overarching design and character of the street scene, and are not relevant to the consideration of living conditions as per this particular proposal. Equally, Policy 7.4 is not relevant to this matter which concerns character and appearance of the street scene.

Provision of adequate bin storage and resultant impacts upon character and appearance and living conditions.

16. The appeal site is part of a terrace of 6 dwellings that appears to date from the late 19th Century, although part of the terrace appears to have been rebuilt. Each of the buildings that make up the terrace are set back from the road edge with small front gardens although they are hard scaped and some contain breaches to front boundary walls to allow for car parking and storage of bins. The current informal arrangement of bins within the front gardens of the terraces as well as the appeal site is detrimental to the character and appearance of the street scene.
17. The proposed plans indicate a desire to regularise the existing bin storage arrangement where there is currently no formally designated area to store wheelie bins. The proposed plans appear to only show the arrangement of the additional flat where the proposed plans state that 3 bin enclosures would be provided that are 'added to existing' and would be located to the periphery of the front lightwell. The Council have published a '*Waste and Recycling Guide for Developers*' June 2019 which is a material consideration to this scheme. The guide at Section 4.1.1 states that each property is entitled to 120 litres of residual waste per dwelling which involves a 140 litre standard refuse bin, a 140 litre recycling bin and a 140 litre food and garden waste bin.
18. In order to regularise the existing and proposed situations, this would mean that the front garden would need to cater for 9 bins to the front of the property which has not been shown on the proposed plans. I note discussion with regards to the bins in the applicant's SoC which states that 2 x 360 litre waste and recycling bins could be provided and a 240 litre food and garden waste bin. No further information has been presented with regards to the 360 litre bin, as this would not appear to be a type of bin that the Council collect according to

the Waste and Recycling Guide, however no details of any private arrangements have been given.

19. Based on the proposed plans that the Council made their decision upon, the proposed scheme is shown in isolation to the new flat and does not regularise the existing waste storage situation. It is also unclear whether a satisfactory solution could actually be obtained given the need to allow for the front lightwell and potentially elements such as cycle storage and landscaping. Whilst I appreciate that waste storage could potentially be dealt with via condition, it is unclear whether the principle of the proposed scheme could be made suitable. Without proper waste provision the proposed flat would exacerbate the existing poor provision, which would cause increased clutter to the front of the property that would present a negative visual impact to the street scene.
20. I note that the Council have referred specifically to the detriment to health of surrounding occupiers, and whilst I appreciate the harm caused by an excess of waste storage facilities, the risk to human health has not satisfactorily been demonstrated by the Council.
21. In conclusion on this matter, I find the proposed development does not make satisfactory provision of bin storage which is likely to cause harm to the character and appearance of the street scene. Consequently the scheme would be contrary to Policy CS6 of the LP (which seeks to ensure that new development provides accessible, adequate and well designed external storage); CS15 of the CS (which seeks to ensure high quality development that acknowledges the character and distinctiveness of the area); DMP Policies DM32 (ensures the provision of facilities for the storage, collection and disposal of refuse; with these policies being supported by the Waste and Recycling Guidance for Developers.
22. CS Policies CS7 (Sustainable Transport); CS12 (Heritage Assets); and DMP Policies DM16 (Parking), are referenced in the Reason for Refusal however do not relate to waste provision or character and appearance with regards to this particular matter.

Cycle Provision

23. The proposed scheme would provide two cycle parking spaces in a shed located within the rear communal garden for the proposed flat. Whilst the Council do not dispute the total cycle storage provided, they raise concerns over the accessibility and convenience of the cycle parking. In this particular case the proposed Flat 3, to make use of the cycle store, would need to enter the main entrance of the property at ground level, take their bike down a flight of stairs to the basement flat, then wheel the bike through the flat to the rear courtyard, then lift the bike up a flight of stairs to the rear communal garden of the property then take the bike to the shed in the rear garden to store it.
24. I acknowledge the applicant's comments that in their opinion there is no specific guidance offered in terms of design and siting other than it being accessible, however this is not the case. Policy DM16 of the DMP refers to Appendix 4 which does give guidance in terms of design and siting where it says '*Cycle parking should be located as close as possible to the entrance(s) to the building it serves without obstructing pedestrians*' and '*for flats or student accommodation either individual lockers or cycle stands within a lockable, covered enclosure are required. The cycle parking should be easily accessible*

*and convenient to use*⁸. I also note reference in the Council's decision notice to the London Cycle Design Standards 2014 which at Chapter 8 states that cycle storage should be '*well located: close to the entrance of the property and avoiding obstacles such as stairs, multiple doors, narrow doorways (less than 1.2 metres wide) and tight corners*'⁹.'

25. On this basis, and in conclusion on this matter, the proposed cycle parking provision as detailed would be impracticable and inconvenient to future occupiers. Whilst I appreciate that such matters regarding cycle storage may be able to be resolved via condition, there are a number of outstanding issues with regards to the front garden and whether it can be designed to accommodate all of the required provisions. In conclusion on this matter, the proposed scheme is contrary to DMP Policy DM16, and London Plan Policy 6.9 which both seek to ensure that developments provide secure, integrated, convenient and accessible cycle parking facilities, which is supported by the London Cycle Design Standards.

Conclusion

26. For the reasons given above, I conclude that the appeal be dismissed.

J Somers

INSPECTOR

⁸ DMP Page 272

⁹ Chapter 8, Page 20