



Appeal Decision

Site visit made on 16 December 2020

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th February 2021

Appeal Ref: APP/U5930/W/20/3253899
187 Hoe Street, Walthamstow E17 3AP

- 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 ABV Solicitors against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 200355, dated 3 February 2020, was refused by notice dated 6 April 2020.
 - The development proposed is described as PART CHANGE OF USE FROM A2 TO C3 (TWO FLATS) TO INCLUDE REAR GROUND AND FIRST FLOOR EXTENSIONS AND ALTERATIONS TO THE GROUND FLOOR SHOPFRONT TO INCLUDE NEW ACCESS TO PROPOSED FLATS.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 amending the Town and Country Planning (Use Classes) Order 1987, amending the system of use classes. The amendments include the creation of a new Commercial, Business and Service use class (Class E). The new Class E incorporates previous use classes A1, A2, A3, B1, some of D1 and D2. The Council and appellant have been provided with an opportunity to comment on this matter.

Main Issues

3. The main issues are:
 - the effect of the development upon the character and appearance of the terrace and the area;
 - the effect of the development on the living conditions of future occupiers of Flat 1 with particular reference to daylight, ventilation and internal space;
 - whether the development would be acceptable having regard to development plan policies for the protection of employment land;
 - the effect of the construction of the proposed development on the public highway; and,

- whether the development would facilitate a car or permit free development that would encourage sustainable transport.

Reasons

Character and appearance

4. The appeal site is the end building of a distinct terrace of ten three storey pitched roof buildings integrating one and two storey outriggers to the rear. Although there has been some alternations to the buildings, the appeal site like many in the terrace, maintains much of its historic form and appearance, including the pitch and depth of the paired outrigger. The more recent additions are lower and only protrude a limited depth further, maintaining the eminence of the existing outrigger and the rhythm created by similar paired outriggers. Consequently, the appeal site and this terrace makes a positive contribution to the character and appearance of the area.
5. The new considerably deeper inward pitched rear extension would create a partial valley type roof, not in keeping with the other buildings in this terrace. The significantly increased depth and scale would dominate the rear of the host building appearing as a significantly incongruent addition. The depth and bulk on two floors across the width of the building, would result in a significant imbalance between the rear of the appeal site and No 185. Therefore, the development would result in a deep and bulky extension that would be incongruent and significantly harmful to the character and appearance of this terrace and the area.
6. The footprint indicated on the historic land registry plan does not detail the height or roof form of any historic projection. Based upon the details shown it appeared to directly adjoin and reflect the depth of a neighbouring building, close to a perpendicular historic terrace. Therefore, it was set in a significantly different context to that which currently exists. The wider area including other terraces have differing roof forms and some sizeable extensions. However, they are viewed as part of other different terraces and groups of buildings. Their presence does not justify allowing this development.
7. Although an elevation of the scheme to redevelop the land to the south (Nos 189 – 203) has been provided, the full details of that scheme are not before me to show its full relationship with the appeal proposal. Therefore, a full assessment of the effect of that development is not possible. There is also no substantive evidence that this scheme has been implemented or will be built out. Even if it were built out, the existing terrace would be viewed as a distinct terrace of 10 buildings, to which this appeal proposal would be significantly harmful for the reasons I have already set out.
8. For the reasons set out above the development would be significantly harmful to the character and appearance of the terrace and the area. It would conflict with Policy CS15 of the Waltham Forest Local Plan Core Strategy (2012) (the CS) and Policy DM29 of the Waltham Forest Development Management Policies Local Plan (2013) (the DMPLP). In combination and amongst other things these expect development to be of a high quality design and architecture, resulting in a visually attractive development, recognising and reinforcing local distinctiveness, that responds positively to its local context and character.

9. The Council's second reason for refusal refers to Policies CS13 of the CS and DM23 of the DMPLP. These relate to promoting health and well-being, so are of less relevance to this main issue than the other policies I have referred to above. Policy DM4 of the DMPLP and the Supplementary Planning Document Residential Extensions and Alterations (2010) have also been referred to. These are understood to primarily relate to the extension and alteration of existing residential dwellings. As the existing building is not currently a residential dwelling, these are of limited relevance to this proposal.

Living conditions

10. Flat 1 would meet the minimum 50 square metre (sqm) internal space standard requirement for a 2 person 1 bedroom flat in table 8.1 of Policy DM7 of the DMPLP. However, only two of its five main spaces would be directly served by natural light, from two single windows. The bedroom would be an 'L' shape with a small window in the narrow section of the room. The dimensions limit the use of the narrowest part of the room and would provide poor quality natural light to a significant proportion of the room. The kitchen, bathroom and long 'L' shaped hallway would not be served directly by outward facing windows. These spaces make up nearly half of the floorspace in flat 1.
11. The flat might be able to meet the Building Regulations requirements with artificial lighting. However, the lack of natural light combined with the small kitchen and the long narrow 'L' shaped hallway space and bedroom, would provide a poor quality living environment for the future occupiers with respect to shape, layout, and lack of natural light. It may be possible to provide an acceptable ventilation system in accordance with the Building Regulations. However, even with ventilation, combined with the quantity of internal space and outdoor space, this would not mitigate or outweigh the significantly harmful living conditions in respect of daylight and layout.
12. The full details and circumstances surrounding the approval of the scheme at Nos 189 – 203 are not before me. Therefore, I cannot make a reasoned comparison of the effects on living conditions of that scheme. Based upon the evidence before me, it is a significantly different comprehensive development, with different effects upon the living conditions of existing and future occupiers. Therefore, the approval of the scheme does not justify approving this appeal scheme, which I have considered on its own merits.
13. For the reasons set out above this development would result in significantly harmful living conditions to the future occupiers of flat 1 in respect of the internal layout and lack of daylight. Therefore, it would conflict with Policies CS13 and CS15 of the CS and Policies DM7, and DM32 of the DMPLP. In combination and amongst other things these policies require developments are of the highest quality including internally, are functional, and provide satisfactory and healthy living conditions for future occupiers. The Technical housing standards – nationally described space standard (2015) (the NDSS) expects the bedroom to be at least 2.75m wide. Due to the 'L' shape, the bedroom would also not meet this requirement of the NDSS.
14. The Council's third reason for refusal refers to Policy DM23 of the DMPLP, which mainly relates to Health Impact Assessments, promoting exercise and hot food takeaways. Therefore, it is of limited relevance to this main issue.

Loss of employment floorspace

15. Whether or not site was classed as primarily falling within a B1 or A2 use class, it is now part of Class E (Commercial, Business and Service). Even though the current floor layout is not efficiently set out, it provides three floors of accommodation that can be used for a commercial or employment generating Class E use. The extension and new ground floor layout provide a more efficient use of accommodation compliant with some economic growth facilitation measures in objectives C), D) and F) Policy CS8 of the CS. However, the development results in a significant loss of overall available floorspace for an employment generating use. The level of employment provided for in the new layout is not clear. Furthermore, there is no evidence to suggest that much of the ground floor cannot be altered to be made more efficient independently of the residential proposal.
16. As the appeal site is non-designated employment generating land, Policy CS8 E) permits the change to a more productive use where it can be clearly demonstrated to be surplus to requirements and no longer fit for purpose. Policy DM20 A) of the DMPLP sets out more detailed criteria that proposals will be considered against. There is no substantive evidence to demonstrate clear barriers or constraints for a future employment generating use, or of previous marketing to lease or sell the premises. There are no arrangements before me to re-train workers, or a local labour agreement. The new use may be suitable to its surroundings. However, given the harm in respect of character and appearance and living conditions, the proposal is not well-designed.
17. For the reasons set out above the development is not be supported by development plan policies for the protection of employment land. Therefore, it would result in a conflict with Policy CS8 E) of the CS and Policy DM20 A) of the DMPLP. In combination and amongst other things, these support the loss of non-designated employment premises only where it can be demonstrated to be surplus to requirements and no longer fit for purpose.

Construction Logistics Plan

18. The appeal site is located on a busy section of Hoe Street, surrounded by several shops, services, restaurants and dwellings, close to a busy junction and one way system a short distance from Walthamstow Central underground and bus station. On-street parking outside the site restricted by double yellow lines and loading restrictions. Vehicular access to the rear of the site may be gained via a narrow single vehicle width under croft under No 167, serving a wider courtyard area. The under croft and much of the rear service area are not within the appeal site and the nature of the rights of use are not before me.
19. If the under croft could be used, the frequent use by construction vehicles, including material deliveries, plant, and machinery, may be likely to result in vehicular and pedestrian conflict on this busy thoroughfare. The appeal site is understood to be in close proximity to a number of other construction sites, with which the development may result in an adverse effect. Given the scale of the proposed build, the highway conditions, nature of the access, and, potential for vehicular and pedestrian conflict, I am not assured construction logistics details can be adequately dealt with by a planning condition.
20. The limited evidence before me does not assure me that the development could be constructed without having a significant adverse effect upon the public

highway in proximity to the site with respect to highway safety and convenience. Therefore, the development would be likely to result in a conflict with Policy DM13 of the DMPLP which seeks to ensure proposals are supported by a Construction Logistics Plan, and Policy 6.3 of the LP which is understood to seek that development does not have an adverse effect on the highway.

21. Policy DM32 is referred to in the Council's fifth reason for refusal. However, as this primarily relates to living conditions of neighbouring occupiers and the provision of facilities for the storage, collection, and disposal of refuse. It is of limited relevance to this main issue.

Car parking

22. There is proposed to be cycle storage facilities to the rear of the appeal site, but no vehicular parking spaces are proposed. The site is in close proximity to a considerable number of services and facilities and to Walthamstow Central underground and bus station. Therefore, there would be sustainable travel options conveniently available to future occupiers for many journeys.
23. The appellant has suggested that a legal agreement with the Council restricting the future occupiers from applying for parking permits could be dealt with by a planning condition. The Council has not provided substantive evidence that would lead me to disagree with this. Therefore, there is no dispute between the parties that the development would require a planning obligation to secure a car or permit free development, and that this could be achieved through a suitably worded planning condition.
24. Subject to the imposition of a suitably worded condition the development would be compliant with Policy DM16 of the DMPLP, which amongst other things, seeks to promote car capped and car free parking. It would also be compliant with Policies CS7 of the CS and DM14 of the DMPLP, which are understood to have a similar objectives, so as to promote sustainable travel.

Other Matters

25. The appeal site is within a Zone of Influence (ZOI) of the European designated Epping Forest Special Area of Conservation (SAC). The Conservation of Habitats and Species Regulations 2017 (as amended) require where a project is likely to result in a significant effect on a European site (in this case the SAC), the competent authority is required to make an Appropriate Assessment (AA) of the implications of that project on the integrity of the European site. If constructed, the appeal scheme would create two dwellings within a short drive of the SAC. However, as the development is not proposing mitigation, or benefits to the SAC that would weigh in favour of the scheme, and I am dismissing this appeal for other reasons, it is not necessary to look at this matter in detail.

Planning Balance

26. The development would result in a small social benefit by providing two one bedroom dwellings in an accessible location. There would be a minor temporary economic benefit during construction. The efficient use of ground floor office accommodation is a benefit of the development, meeting some aspects of the advice in paragraphs 7 and 8 of the National Planning Policy Framework (2019) (the Framework). These matters attract a small amount of weight in favour of the scheme.

27. Having regard to the significantly reduced employment floorspace, there is no substantive evidence to suggest once occupied the appeal proposal would be likely to result in an overall sustained benefit to the local economy, compared to the existing use. Compliance with other policies such as those in respect of car parking and sustainable transport objectives would be a neutral matter. These matters attract neutral weight.
28. However, the benefits and policy compliance of the development do not outweigh the conflict with the Council's strategy for retaining employment floorspace, the significant harm to character and appearance, the significant harm to the living conditions of the future occupiers of flat 1, and the likely harm to the operation of the public highway in proximity to the appeal site. In combination these matters attract significant weight against the scheme.
29. There is no evidence before me to demonstrate that the proposal engages the presumption in favour of sustainable development under paragraph 11c) or d) of the Framework. This is because the proposal conflicts significantly with the development plan taken as a whole. It is not demonstrated the most important policies are out of date. Furthermore, any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.

Conclusion

30. The proposed development would be contrary to the development plan and there are no other considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR