



Appeal Decision

Site visit made on 17 November 2020 by Thomas Courtney BA(Hons) MA

Decision by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Appeal Ref: APP/Z5060/W/20/3254518

Rear of 60 High Road, Chadwell Heath, RM6 4BP

- 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 N. Chowdhury against the decision of the London Borough of Barking & Dagenham Council.
 - The application Ref 20/00445/FUL, dated 3 March 2020, was refused by notice dated 20 May 2020.
 - The development proposed is the formation of two storey detached building containing two self-contained flats.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr N. Chowdhury against the Council of the London Borough of Barking & Dagenham. This application is the subject of a separate decision.

Appeal Procedure

3. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matter

4. An amended site plan was provided with the appeal which removed the waste storage annotation from the northernmost part of the site, and removed the illustrated cars from the southernmost part. As this has not materially altered the development, no parties are prejudiced by my acceptance of the amended plan despite not having been consulted on it.

Main Issues

5. The main issues in this case are:
 - whether the development would provide satisfactory living conditions for its future occupants, having particular regard to outlook, privacy and the provision of outdoor amenity space;
 - the effect of the development on the living conditions of the occupiers of the first floor flat at 60 High Road and of properties on Eric Road with regards to a loss of outlook, privacy, noise and general disturbance; and
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- the effect of the development on highway safety.

Reasons for the Recommendation

6. The appeal site comprises a piece of land to the rear of 60 High Road and is accessed via a narrow service road known as Back Lane. A pedestrian alleyway abuts the western boundary of the site connecting Back Lane to High Road. No. 60 accommodates a ground floor commercial unit with flats above and features single storey rear extensions. The appeal site is currently fenced off and overgrown with vegetation. Back Lane is characterised by its function as a service lane for the businesses fronting the High Road. I observed a mix of service yards, garages, warehouses, offices, areas of hardstanding used for parking, residential conversions as well as newly built residential units. To the south lies the rear gardens of the properties on Eric Road.

Living conditions of future occupiers

7. The proposed building would be located in very close proximity to the rear of No.60. Although the Council and the plans suggest a separation distance of around 6m, this does not seem to account for No.60's ground floor rear extensions. There is no suggestion in the evidence that these structures would be demolished as part of the proposal and therefore the window of the ground floor bedroom would practically abut the rear elevation of No.60 with only the small gap, previously shown as a waste store, in between. The proposed ground floor bedroom would therefore have an inadequate outlook. Also, the proposed first floor bedroom would be directly oriented towards the first floor flat at No.60 and, due to the limited separation distance, would fail to provide sufficient privacy for the future occupiers. I am not satisfied that obscure glazed windows would overcome these issues as this would negate any form of outlook from the proposed bedrooms.
8. Policy BP5 of the Council's Borough Wide Development Policies Development Plan Document (the 'local plan') states that one-bedroom flats should have 20sqm each of private amenity space. It adds that in town centre locations, suitable alternatives such as balconies may be considered. The Council calculates the balcony space for each flat at the site to be 5sqm, which is not disputed by the appellant. I also acknowledge the close proximity of St Chad's Park which would provide recreational space for the occupiers of the flats. As such I consider that the balconies, in combination with St Chad's Park would provide an acceptable amount of amenity space. However, they would overlook and sit directly adjacent to the shared parking area. Due to this siting and lack of sufficient screening, the balconies would not offer a pleasant or private space for the future occupiers.
9. Given the above, the development would fail to provide satisfactory living conditions for the future occupiers with regards to their outlook, privacy and outdoor amenity space. It would therefore substantially conflict with policies 3.5 & 7.6 of the London Plan, and emerging policies D4, D5 and D6 from the Draft London Plan which together seek the delivery of high quality designed developments. The development would also substantially conflict with policy BP5 of the local plan and emerging policy D6 which aim to ensure proposals provide appropriate private external space. Although quoted within the decision notice, policy 3.8 is not directly relevant to this issue as it relates more specifically to housing choice.

10. The Council also suggest the development would not be able to accommodate residents or visitors with wheelchairs or limited mobility. However the policy referred to, BC2 of the local plan, only refers to major housing schemes, and the London Plan requirement, noted in the justification for that policy, is for 10% of new dwellings to be wheelchair accessible. This small development would therefore not conflict with this policy.

Living conditions of neighbours

11. Due to the aforementioned minimal separation distance between the proposed building and the first floor flat at No.60, it is considered that their existing open rear outlook would be markedly impacted by the bulk of the proposal. Also, in the same way that the privacy of the occupiers of the development would be harmed by the proximity of the facing first floor windows at No 60; the privacy of the occupiers of No 60 would be harmfully affected by the proximity of the first floor windows in the proposal.
12. Whilst the appellant refers to previous applications at the site, these were for the erection of a two-storey store/office building and so would not have been likely to have impacted the privacy of the first floor flat of No 60 to the same degree as the scheme before me.
13. However, there is nothing to suggest the occupation of the development would generate unacceptable levels of noise that would be unacceptably disturbing to the residents at No.60, as most of the noise that would be generated would come from the vehicles and the balconies at the front of the development adjacent to Back Lane.
14. Furthermore, although the properties on Eric Road have rear elevations facing the appeal site, these lie at a distance of approximately 22 metres from the proposed first floor balcony of the development. Due to this considerable separation distance there would be no unacceptable loss of privacy for the occupiers of the properties on Eric Road.
15. Nonetheless, the development would unacceptably harm the living conditions of the occupiers of the first floor flat of No 60 with regard to their outlook and privacy. It would therefore significantly conflict with policy BP8 of the local plan, policies 3.5, 7.4, 7.6 of the London Plan, policies SP4, and DM11, of the Council's Draft Local Plan Regulation 18 consultation version (November 2019) (the 'draft local plan') as well as emerging policy GG4 of the Draft London Plan which together seek to ensure proposals are well-designed, respect their surrounding context and protect the amenity of neighbouring occupiers.
16. The proposal would however not conflict with policy 7.15 of the London Plan, policy DM25 of the draft local plan and policy D14 of the draft London Plan which seek to prevent adverse noise impacts. Policy GG1 of the draft London Plan is not relevant in this instance as it is a strategic policy relating to the delivery of strong and inclusive communities, nor is 7.1 of the London Plan as that refers mainly to the provision of healthy communities, or Policy DM16 of the draft local plan as that relates to domestic extensions and alterations.

Highway safety

17. Back Lane is a narrow and poorly lit service lane which does not accommodate pedestrian footways. However, when on foot, the future occupiers would most likely use the alleyway which gives access to the High Road and thus avoid

using Back Lane. Lighting could be secured by condition in order to improve the safety of the alleyway. I therefore do not find any harm in this regard.

18. The development would lead to an intensification of use of the service lane. The Council's transport development manager expressed concern that an increase in the number of vehicles using Back Lane should be avoided as it would interfere with its main purpose which is to provide access for deliveries and refuse vehicles to properties that don't have access from the High Road. I concur with this view and consider that the proposal would increase the risk of congestion.
19. However, the extant consent for an office/store included parking provision for two cars, and it is clear the current proposal could accommodate parking for two cars also. I do not consider the number of vehicle movements from the proposed development would be materially different from that associated with the extant planning permission even if that had been ancillary to the commercial unit at No 60.
20. Therefore, the development would not harm highway safety and so accords with Policy BR9 of the local plan, policies 6.3, 6.9 and 6.13 of the London Plan, and Policy DM32 of the Draft Local Plan which together seek to ensure proposals do not negatively impact on highway safety, provide for the needs of businesses for delivery and servicing, and provide appropriate cycle and vehicle parking. The lack of harm in this regard is a neutral factor in the planning balance.

Other Matters

21. The appellant refers to Policy BC4 of the local plan in their evidence. However, as that policy applies to residential conversions and houses in multiple occupation, it has no relevance to this appeal.
22. The appellant draws attention to other housing developments along Back Lane, including adjacent to the appeal site. While this demonstrates housing development on the site would not be out of keeping with the character of the area, it cannot mitigate for the harmful living conditions that would ensue for both the occupiers of the proposed flats and the residents at the first floor flat at No 60.
23. There would be limited social and economic benefits associated with the proposal. Two small additional units would make a minimal difference to the overall supply of housing and the support two extra households would provide to the local economy, even at the current time with the effects of Covid-19 on the economy, would also not be significant.

Planning Balance

24. The appellant contends that the Council cannot demonstrate a five-year supply of housing and has provided the Council's Interim Five-Year Housing Supply Statement for the five-year period commencing 1st April 2019 which states that the Council currently have 3.7 years' worth of housing land. The Council has failed to provide any information in respect of this matter. Consequently, I am unable to conclude that the Council can demonstrate a five-year supply of housing land.

25. On this basis, as directed by Footnote 7, paragraph 11 d) of the National Planning Policy Framework (the 'NPPF') should be applied. This means planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
26. The NPPF seeks to significantly boost the supply of housing, encourages residential development in locations served by sustainable transport and advocates the efficient use of land. It also states that small sized sites can make an important contribution to meeting the housing requirement of an area. However, it also aims to achieve a high standard of amenity for existing and future users.
27. It is considered that the considerable adverse impacts on the living conditions of future occupiers and neighbouring residents would significantly and demonstrably outweigh the limited benefits when assessed against the policies in the NPPF taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
28. Furthermore, Paragraph 213 of the NPPF makes it clear that due weight should be given to existing policies according to their degree of consistency with the NPPF. The development plan policies referred to above, which seek to ensure developments are designed to ensure the amenity of existing and future residents is protected, are consistent with the NPPF. Therefore the proposal's substantial conflict with them can be given significant weight.
29. In view of the above, the proposal would be contrary to the aims of the development plan as a whole, and there are no other considerations, including the provisions of the NPPF and the Council's insufficient supply of housing land, which outweigh this finding.

Recommendation

30. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

Thomas Courtney

APPEAL PLANNING OFFICER

Inspector's Decision

31. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

Andrew Owen

INSPECTOR