
Appeal Decision

Site visit made on 5 May 2021

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th June 2021

Appeal Ref: APP/U5930/W/20/3264526

Land to the rear of 23 Fillebrook Road, Leytonstone, London E11 4AU

- 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 Peter Soon against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 192845, dated 24 August 2019, was refused by notice dated 25 June 2020.
 - The development proposed is demolition of existing garage and construction of a two-storey building including excavation of a basement level to provide a 1-bedroom dwelling (Class C3), with refuse store, cycle parking and associated works
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have largely adopted the description of development from the decision notice in favour of that of the original planning application form as it provides a more precise summary of development proposed, although I have made further minor changes to the description for clarity and accuracy.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area, in particular through the proposed change of use to residential, and in relation to the design, bulk and effect on the streetscene;
 - whether or not the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to: (i) outlook from, and light to, the bedroom; (ii) outlook from the living room; and, (iii) the size of, and light to, the private outdoor amenity space;
 - whether or not it has been demonstrated that the proposal could achieve Code for Sustainable Homes Level 4; and
 - the effect of the proposal on the living conditions of the occupiers of neighbouring properties, in particular those of 21, 23 and 25 Fillebrook Road with regard to outlook, and 23 Fillebrook Road with regard to loss of private outdoor amenity space.

Reasons

Character and appearance

4. 23 Fillebrook Road is a Victorian mid-terrace property, sub-divided into flats. The appeal site is located to the rear of No 23 in a prominent roadside location and is occupied by a detached single-storey garage which fronts onto, and is accessed from, Grove Green Road. There is also a small amount of open land to the rear of the garage. The appeal site is located at the top end of the former garden to No 23 but is fenced off from, and does not form part of, the garden. This part of Grove Green Road presents the back elevation to the residential properties fronting Fillebrook Road. There are a number of garages, brick walls, sheds and other ancillary structures. The character is clearly one of a subsidiary, rear frontage to the principal properties along Fillebrook Road. There is one two-storey pitched roof building to the rear of 41 Fillebrook Road. However, this building is an exception to the prevailing character of single-storey flat roof ancillary buildings and structures.
5. It is proposed to construct a two-storey dwelling albeit with only one storey above ground. The proposed structure fronting Grove Green Road would remain at one storey and would have an entrance door and access doors to a refuse storage area. Therefore, despite the proposed change of use and fairly extensive proposed building, as perceived from Grove Green Road the proposal would remain subservient and ancillary in character and appearance to the principal properties along Fillebrook Road. However, the proposed property would also be visible from surrounding properties and their gardens. It would represent a significant visual intrusion into an area characterised by gardens and small ancillary structures. It would change the character of the appeal site from an ancillary garage and small piece of open space to that of a dwelling. The proposed green roof would help to mitigate the visual effect, however the lightwell would reveal the two-storey nature of the structure and its true bulk and mass, as well as causing light pollution.
6. The proposal would, therefore, due to its bulk, mass and introduction of a dwelling character, be out of keeping with the character and appearance of the appeal site and the surrounding area. Consequently, the proposal fails to comply with the relevant parts of Policy CS15 of the Waltham Forest Local Plan Core Strategy 2012 (the CS), Policy DM29 of the Development Management Policies Local Plan 2013 (the DMP) and the Urban Design SPD 2010 (the SPD). These policies and documents, amongst other criteria, require high quality design which respects local distinctiveness.

Living conditions of future occupiers

7. The proposed house would have a kitchen area to the ground floor, lit by roof lights and two windows. There would be a living room below this at a semi-basement level. This would be lit by glass floors within the kitchen area and part of a window to the proposed courtyard garden. Outlook from the living room would be limited to this part-window onto the courtyard garden, which itself would be set significantly below the surrounding ground level and would be surrounded on two sides by tall boundary walls. The glass floors to the kitchen area above would provide very limited, if any outlook, via the kitchen area. Consequently, the living room would have an unacceptably poor outlook that would not provide satisfactory living conditions for future occupiers.

8. A bedroom is proposed to the rear of the site, partially set below the existing garden level. It would have access to a full height, south facing window overlooking the proposed courtyard. On the opposite side of the courtyard would be the kitchen/living part of the house and it would be flanked by tall boundary walls. This built form would restrict outlook from the bedroom. However, because the proposed window would be full height I judge this restriction would not be so much as to unacceptably restrict outlook from the bedroom. However, the window, and therefore bedroom, would be overshadowed by the surrounding built form. This could potentially be to a significant degree given the relatively high proposed building and boundary walls and their orientation to the south, east and west of the window, and therefore at least partially in the path of direct sunlight. No evidence has been provided that the bedroom would be provided with adequate daylight or sunlight.
9. The private amenity space would comprise a courtyard garden of 12 sq m, sunk below the existing garden level. A winter garden of 8 sq m is also proposed. I do not view this as private amenity space because it also functions as an access corridor, and the only link from the main living area, to the bedroom. It could not, therefore, be used regularly or easily as private outdoor amenity space. A supporting table to Policy DM7, not contained within the policy itself, sets a minimum outside space standard of 50 sq m for 1-bedroom houses. I acknowledge that the Council have approved houses with outside space lower than the 50 sq m standard. I also acknowledge that the Council's outside amenity space standard for 1-bedroom flats is only 10 sq m and that a degree of flexibility on the size of the open space is allowed for in the text of Policy DM7 itself, which only requires that homes have well designed and useable outside space.
10. In these regards, the proposed outside space clearly falls below the 50 sq m minimum size. Importantly, the outside space would be sunken below the existing garden level and would be surrounded on all sides by tall boundary walls or the proposed house. The tallest element of the proposed house would be to the south of the courtyard therefore likely creating significant overshadowing of the space. No assessment has been provided of the overshadowing of the courtyard. It has therefore not been demonstrated that the proposed space would benefit from adequate sunlight and therefore that it would be well designed and useable. It is a benefit that the bedroom, kitchen and living spaces look out onto the garden, but this benefit is limited because the living space only has a small window onto the garden.
11. The proposed floorspace is 72 sq m gross internal area (GIA). The 'Technical housing standards – nationally described space standards' for 1-bedroom, 2-storey dwellings is for a minimum size of 58 sq m (GIA). However, the additional internal space does not adequately replace or mitigate the sub-standard provision of outside amenity space. This is because the internal space itself would not offer a suitable quality of accommodation for the reasons set out above.
12. Overall, the proposal would not provide adequate living conditions for future occupiers due to poor outlook from the living space. It has also not been demonstrated that adequate sunlight or daylight would be received by the proposed bedroom, or by the proposed garden courtyard. The proposal therefore fails to comply with the relevant parts of Policy DM7 of the DMP. It

fails to comply with the relevant parts of Policy DM29 which, amongst other criteria, requires the provision of appropriate and useable amenity space. It also fails to comply with the relevant parts of Policies CS2, which requires high quality housing design, CS13, which promotes health and wellbeing, and CS15, which requires well-designed and functional developments, of the CS.

Sustainability

13. Policy DM10 of the DMP requires residential development of one or more units to achieve Code for Sustainable Homes (the Code) Level 4 or equivalent standards. The Code has been withdrawn. However, a Written Ministerial Statement¹, and also Planning Practice Guidance², confirms that Council's can continue to set requirements for proposals to be at the equivalent of Code Level 4, particularly where applying existing policies. This is because s43 of the Deregulation Act 2015 has not yet come into force to amend the Planning and Energy Act 2008.
14. The appellant has not provided these details and it has not been demonstrated that the proposal could achieve Code Level 4 or equivalent standards. The proposal therefore fails to comply with Policy DM10 of the DMP. It also fails to comply with Policy CS4 of the CS which, amongst other criteria, requires high environmental development standards. This could not be overcome by the imposition of a condition to require the future submission of details in this regard because it has not been demonstrated that Code Level 4 is achievable and therefore such a condition would not be reasonable.

Living conditions of neighbours

15. The proposal would be entirely on land that has already been fenced off from the rear garden of No 23. It would not therefore result in the loss of any private outdoor amenity space for the occupants of that property.
16. The appeal site is close to the rear windows and doors to the rear of the closet wings of Nos 21, 23 and 25. It is not clear what living spaces are behind the windows and doors but they are likely to be either living areas, kitchens or bedrooms given their location and accessibility to their respective rear gardens.
17. The proposed building would encompass the entire footprint of the existing site, including erecting built form over a currently open part of the appeal site nearest the properties to the rear. Particularly from upper floor windows to Nos 21, 23 and 25, there would be a significant increase in built form compared to the existing situation. However, the proposal would move the taller elements of the built form further away from the properties to the rear compared to the existing garage and would not be taller than the existing garage. There would be a slight increase in the height of the existing boundary wall separating the appeal site from the rear garden of No 23 but this would only be a very minor increase. The overall effect on outlook from Nos 21, 23 and 25 would therefore be limited.
18. Consequently, the proposal would not unduly harm the living conditions of the occupiers of neighbouring properties and would comply with the relevant parts of Policy CS13 of the CS which promotes health and wellbeing, Policy DM29 of the DMP which, amongst other criteria, requires development to address its

¹ Planning update 25 March 2015

² Paragraph 012, Reference ID: 6-012-20190315

potential impact on neighbouring amenity, and Policy DM32 of the DMP which, amongst other criteria, requires that adequate light and outlook is retained by neighbouring occupiers. Policy CS15 of the CS has been referenced in the reason for refusal but does not relate to the living conditions of neighbours and is therefore not relevant to this main issue.

Planning Balance and Conclusion

19. Although the effect on the outlook from neighbouring properties would not be unduly harmful, the proposal would be out of keeping with the character and appearance of the appeal site and the surrounding area. The proposed house would also not provide adequate living conditions for future occupiers due to poor outlook from the living space and it has not been demonstrated that adequate light would be received by the bedroom or garden courtyard. It has not been demonstrated that the proposal could meet the required sustainability standard of Code Level 4 or equivalent.
20. For the reasons above, I conclude that the appeal be dismissed.

O S Woodward

INSPECTOR