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## Appeal Decision

Site visit made on 31 August 2021

**by D Szymanski BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> September 2021**

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**Appeal Ref: APP/G5750/W/21/3268730**

**131A Gainsborough Avenue, Manor Park, London E12 6JN**

- 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 Richard Mayne against the decision of the Council of the London Borough of Newham.
  - The application Ref 20/02044/FUL, dated 13 August 2020, was refused by notice dated 8 December 2020.
  - The development proposed is Construction of a loft conversion with T-shaped dormer extension to create a 1 bedroom apartment with front roof lights and Juliet balcony to the rear.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. On 2 March 2021 the London Plan (2021) (the London Plan) was published, replacing the London Plan (2016) and the revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021. I have given the Council and the Appellant the opportunity to comment upon the implications of these for their cases.
3. The Council's reasons for refusal refer to conflicts with Policies of the previous London Plan (2016) and the appellant's statement makes reference to compliance with its policies. As it has been replaced by the London Plan (2021), this is reflected in my findings in relation to each main issue below.
4. The issue of whether the development is compliant with policies concerned with flood risk was not a reason the Council refused permission. However, having regard to the comments of an interested party and the evidence before me, this matter needs to be addressed in determining this appeal. I have allowed the Council and the Appellant the opportunity to comment on this matter.

### Main Issues

5. The main issues are:
  - the effect of the development upon the living conditions of the future occupiers of the new flat with particular reference to internal and external space provision;

- the effect of the development upon the character and appearance of the host terrace and the area;
- the effect of the development upon the supply of family housing in the Borough; and,
- whether the development is compliant with policies concerned with flood risk.

## **Reasons**

### *Living conditions*

6. The new dwelling would provide approximately 38 sqm of floorspace. This is above the requirement for a 1 person 1 bedroom dwelling with shower set out in table 3.1 and Policy D6 of the London Plan, the Nationally Described Space Standard (2015) (NDSS), and the Mayor of London Housing Supplementary Planning Guidance (2017) (the HSPG). The plans suggest it is likely that storage space could be secured within the eaves space or main room by means of a suitably worded planning condition to comply with development plan, HSPG and NDSS requirements.
7. In order to provide satisfactory living conditions for future occupiers a minimum of 75% of the internal floorspace should be at least 2.5m in height having regard to the London Plan and HSPG, or 2.3m having regard to the NDSS. There are no cross sections provided showing typical sections of the internal floor to ceiling heights. The elevations and floor plans indicate a significant proportion of habitable space would also be under a sloping roof. Based upon these I have concerns the development could not provide a sufficient proportion of space above the necessary internal height, whether I apply the London Plan or NDSS. Therefore, I cannot be certain the new flat would not result in harmful living conditions for its future occupiers.
8. Policy H1 of the NLP expects homes should provide external private open space compliant with the HSPG which expects a minimum of 5 sqm of private outdoor space of practical shape and utility. Such space is of importance to occupiers for well-being and of benefit for household and leisure activities, such as gardening, drying clothes, play space, sitting outside and fresh air. The submitted plans do not show how any private outdoor space would be secured for the future occupiers. This would not provide satisfactory living conditions for future occupiers. I have not been offered a suitably worded planning condition to overcome this matter and I am not satisfied the amount and quality of internal space mitigates the absence of adequate outdoor space.
9. For the reasons set out above the new flat would result in harmful living conditions for its future occupiers in respect of the absence of an external space, and I cannot be certain the development would not provide harmful living conditions in respect of the internal accommodation. Therefore, it would conflict with Policies GG4, D3, D4 and D6 of the London Plan and Policies S1, SP1, SP2, SP3, SP8 and H1 of the NLP. Amongst other things these seek to ensure development is well designed to provide acceptable living conditions for its future occupiers. It would also conflict with paragraph 130f) of the Framework which expects development to create places that promote health and well-being and a high standard of amenity for future users.

10. Policy D1 of the London Plan referenced in the second reason for refusal lists criteria for defining character in undertaking area assessments, assessing area capacity and meeting growth requirements. Therefore, it is of limited relevance to this main issue.

*Character and appearance*

11. The appeal site forms part of an end of terrace building, in one of a number of terraces of primarily two storey bay windowed buildings under hipped roofs at the ends of the terraces, fronting Gainsborough Avenue. To the rear those nearby have similar mostly matching pitched roof cross-gable outriggers. The features result in a rhythm and consistency that forms a positive and prevailing element of the character and appearance of the group of terraces and area, to which the appeal site makes a positive contribution. While there are some dormer extensions in the wider area these were not visible on the terraces of buildings fronting this part of Gainsborough Avenue.
12. By changing the hipped end of terrace roof form to a gable, the proposed development would be markedly out of keeping with other end of terrace properties in this part of Gainsborough Avenue. It would also have the effect of unbalancing the roof of this terrace, thereby having a negative effect upon the character and appearance of the terrace and its contribution to the area.
13. The proposed dormer would cover a considerable proportion of the inside roof slope, set a very short distance above the eaves and below the ridge. As a result of its height, depth, area, flat roof form and overall projection the dormer would form a significantly dominant, bulky, unsympathetic, and therefore harmful addition to the current pitched roof. The second floor double angled windows and in particular the Juliet balcony would be a somewhat prominent and incongruent element, not in keeping with the area, adding to the harm. The development would not comply with the objective in the Altering and Extending your Home Supplementary Planning Document (2018) of complimenting the character and appearance of the original house and group of buildings. The harm would be discernible from the public highway in front of the appeal site and a number of properties west of the site.
14. Therefore, for the reasons set out above the development would be harmful to the character and appearance of the host terrace and the area. It would conflict with Policies D3 and D4 of the London Plan and Policies SP1, SP3 and SP8 of the NLP. Amongst other things these seek to ensure that development is of a high quality design which is in keeping with and enhances the character and appearance of the area. It would also conflict with paragraph 130 of the Framework which expects development to be sympathetic to local character and maintain a strong sense of place. Compliance with other criteria of the aforementioned policies does not overcome or mitigate the harm I have found.
15. Policy D1 of the London Plan referenced in the third reason for refusal lists criteria for defining character in undertaking area assessments and Policy D8 relates mainly to development directly impacting the public realm. Policy S6 of the NLP sets out overarching strategic place making objectives and Policy SP2 sets out criteria mainly in relation to health and well-being. Therefore, I find these to be of less relevance than the other policies referenced above.

### *Family housing*

16. The Council has assessed the existing dwelling on the basis it provides a 3-bedroom family sized dwelling. The wording of Policies H1 and H4 suggest family housing includes 3 bedroom dwellings. The floor plans indicate the property includes a kitchen/living area, two double bedrooms and one smaller bedroom. Based upon the plans before me and what I saw the smallest bedroom was small and the Council has not confirmed it would meet the minimum of 7.5 sqm size for a single room stated in the NDSS, which I take to be indicative of providing suitable living conditions for the occupier.
17. If a standard single bed were to be provided in the smaller room there would be very little space for practical storage or circulation, and it would result in poor quality living conditions for future occupiers. Notwithstanding the Council's references to housing licensing and marketing of other properties, I do not consider the space is sufficient for it to be considered as a bedroom.
18. The main kitchen/living area is also modest in size, awkwardly shaped and a significant proportion of the rear wall space is occupied by doors and windows. Having regard to the needs of family life in respect of storage, informal seating, utility, and circulation, it is a significantly restricted space. There is limited practical space for storage elsewhere within the property for larger household items. Therefore, I do not regard the existing dwelling as a family dwelling.
19. I note the Council's emphasis on the importance of retaining and protecting the stock of family dwellings to meet defined housing needs, and the quotes from appeal decisions. As I do not have the full details and circumstances that lead to their dismissal I cannot make a direct comparison with the appeal proposal before me. However, the extracts suggest those appeal site dwellings were larger than this appeal site dwelling. Therefore, they do not appear to be directly comparable to the appeal proposal in respect of this main issue.
20. For the reasons set out above, the development would not result in the loss of a family sized dwelling, and therefore would not negatively impact upon the supply of family housing. It would not conflict with the aims of paragraph 62 of the Framework, Policies GG4 and H10 of the London Plan, or Policies S1, S6, SP3, H1 and H4 of the NLP. Amongst other things these seek to protect and retain existing family dwellings, meet the needs of the local population, and contribute to creating balanced communities. The development would also not conflict with the HSPG which has similar objectives.
21. As Policy H8 of the London Plan is more applicable to an overall loss of housing, Policy SP1 of the NLP sets out strategic objectives in respect of positive elements and spatial features of the Borough, and SP3 of the NLP sets out urban design criteria, these policies are of less relevance to this main issue than the other policies I have set out above.

### *Flood risk*

22. The appeal site lies within fluvial Flood Zone 3a and within a Critical Drainage Area. Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk. Paragraph 161 expects the application of a sequential approach to the location of development so as to avoid, where possible, flood risk to people and property. The development would result in one further occupier at

the appeal site and associated waste and cycle storage, resulting a potential increase in risk of flooding to people and property.

23. Paragraph 167 of the Framework states development should only be allowed in areas at risk of flooding where, in the light of a Flood Risk Assessment (FRA) (and the sequential and exception tests, as applicable) it can be demonstrated amongst other things, the development is appropriately flood resistant and resilient, any residual risk can be safely managed, and safe access and escape routes are included where appropriate as part of an agreed emergency plan. Policy SC3 of the NLP states that an FRA will be provided in line with national requirements and should be prepared in accordance with the Strategic Flood Risk Assessment and Environment Agency advice.
24. The Environment Agency has objected to the development as an FRA has not been provided. In the absence of an FRA, even if I were to assume the sequential test was met, based upon the evidence before me I cannot be certain the development would not result in an unacceptable increased risk of flooding to people and property, or that any effects can be safely and suitably managed. Therefore, it is a matter that cannot be addressed by the Council's suggested planning condition.
25. For the reasons set out above the proposed development conflicts with policies in respect of flood risk as an FRA has not been provided. In this regard the development conflicts with the requirements of Policy SC3 of the NLP and paragraph 167 of the Framework, the relevant provisions of which I have set out above.

### **Other Matters**

26. I have been provided with details of developments for new flats and/or dormers at Nos 52, 54, 65, 86 Gainsborough Avenue. As I have not been provided with details such as officer reports, the full range of considerations that lead to their approval is not clear, so I cannot make a fully reasoned comparison with the appeal proposal. The examples are not on the same section of Gainsborough Avenue as the appeal site. From what I saw of the location of those properties and surrounds, they are not directly comparable to the character and appearance of the appeal site and distinctive terraces on this part of Gainsborough Avenue. Furthermore, the evidence before me does not indicate the effects of those developments upon the living conditions of the future occupiers. Therefore, the examples provided do not justify allowing this appeal proposal, which I have considered on its own merits.
27. 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) requires where a project is likely to result in a significant effect on a European site, the competent authority is required to make an Appropriate Assessment of the implications on the integrity of the that site. If constructed, this appeal scheme would create an additional dwelling 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 proposal for other reasons, it is not necessary to look at this matter in detail.

## **Planning Balance**

28. The development would result in a small economic benefit during construction and a small and sustained benefit to the local economy once occupied. It would contribute to boosting the supply of housing by providing a further dwelling on the site, compliant with policies of the Framework such as those relating to promoting the more effective use of previously developed land. However, the provision of a single additional dwelling would be a limited social benefit attracting limited weight. Therefore, overall, the benefits of the development attract limited weight in favour of the scheme.
29. If I were to consider the development would or could be made compliant with policies in respect of matters such as waste storage, cycle storage, car parking, accessibility, location of services and facilities, and the effects upon the living conditions of neighbouring occupiers, these would be neutral matters attracting neutral weight. The absence of a conflict with policies in respect of the protection of family housing is also a neutral matter attracting neutral weight.
30. However, the policy compliance and benefits of the development do not outweigh the harm from the development in respect of the character and appearance of the area, ensuring suitable living conditions for the future occupiers, and the conflict with policies in respect of flood risk. The harm and policy conflicts in respect of these matters are such that they attract significant weight against the scheme. Therefore, the appeal should be dismissed.

## **Conclusion**

31. The proposed development conflicts with the development plan and the Framework taken as a whole. There are no material considerations, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

*Dan Szymanski*

INSPECTOR