



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: 29th September 2021

Appeal Ref: APP/G5750/W/20/3265637

131 Church Road, Manor Park, London E12 6AF

- 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 Sivakumaran Kasipillai against the decision of the Council of the London Borough of Newham.
 - The application Ref 20/01819/FUL, dated 23 August 2020, was refused by notice dated 19 November 2020.
 - The development proposed is single storey rear shop extension and minor modifications to shop front with access ramp.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 2 March 2021 the London Plan (2021) 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 appellant the opportunity to comment upon the implications of these for their cases and taken the comments into consideration in determining this appeal.
3. The Council's reasons for refusal and appellant's statement refer to conflicts with Policies of the previous London Plan (2016). As it has been replaced by the London Plan (2021) (the London Plan) this is reflected in my findings in relation to each main issue below.
4. Both parties have referred to a previous planning permission at the appeal site (Ref 06/00690/FUL) which is understood to have permitted amongst other things a rear projection. The appellant has stated it lapsed. Following a request to the Council and appellant for further information on this, I have not been provided with additional details. Therefore, I have treated it as having lapsed and considered the appeal on this basis.

Main Issues

5. The main issues are the effect of the proposed development upon:
 - the vitality and viability of nearby designated town and local centres; and,
 - the living conditions of the occupiers of No 133 Church Road with particular reference to outlook, daylight, and overshadowing.

Reasons

Vitality and viability

6. Policies in the London Plan and the Newham Local Plan (2018) (the NLP) seek to focus and support the provision of goods and services towards town and local centres to maintain a robust retail core, consolidate commercial uses within their boundaries, strengthen, promote, and enhance their vitality and viability, and, to not undermine them and reduce trade leakage. Policy SD7 of the London Plan specifically requires a sequential approach demonstrating there is no suitable or soon to be available in-centre sites, before considering edge of centre, then out of centre sites.
7. The appeal site is not within an existing designated town, local centre, or shopping parade. The additional floorspace increases the amount and range of goods that can be stored, presented for sale, and purchased at the appeal site. While the increased floorspace may be limited in the context of overall floorspace of nearby centres, it represents a material increase having regard to the appeal site premises.
8. As this is a proposal that would increase the retail and storage floorspace of a town centre use I see no substantive reason why the sequential test in Policy SD7 of the London Plan does not apply to this proposal. Furthermore, SD7 also requires an impact assessment for extensions to existing out-of-centre development for retail, leisure and office uses not in accordance with the development plan. This proposal is not in accordance with the development plan. Therefore, SD7 is relevant to this proposal and in the absence of a sequential test and impact assessment, the development conflicts with SD7.
9. Based upon the evidence before me I cannot conclude with any certainty that the extended appeal site offer would not compete with and divert trade from other premises within or adjacent to designated centres selling similar goods, thereby reducing their turnover. I also cannot conclude that the development does not reduce footfall to nearby centres due to consumers purchasing goods at the extended appeal site offer, resulting in consumers not travelling to a designated centre. Therefore, I cannot conclude the development does not materially harm the vitality and viability of existing designated centres.
10. For the reasons set out above the development conflicts with the development plan strategy to focus and locate town centre and specifically retail development to, and support and strengthen, existing town and local centres. I also cannot conclude the development would not have a harmful effect upon the vitality and viability of designated town or local centres. Therefore, it conflicts with Policies SD6 and SD7 of the London Plan and Policies S1, SP1, SP6, SP7, J1 and INF5 of the NLP. In combination and amongst other things, these seek that development is focussed towards, maintains, supports, and strengthens, promotes, and enhances the vitality and viability of town and local centres. It would also conflict with paragraph 86 of the Framework which has similar objectives.
11. The appellant has advised me that a number of the policies referred to above do not apply to or is not relevant to this proposal, referring only to limited aspects of the policies. However, having regard to the nature and likely effects of the proposal and having read the policies as a whole, I disagree with the appellant's view in respect of the relevance of the policies set out above.

However, Policy H1 of the NLP referenced in the Council's first reason for refusal lists strategic principles, design, and technical criteria primarily in relation to residential proposals, so is of limited relevance to this main issue. Consistency with other policy objectives referred to by the appellant, including some of the policies listed above, such as economic growth objectives, does not prevent a conflict with other objectives, or overcome the conflict I have found.

Living conditions

12. The rear of the appeal site comprises an open yard area bound to its west by the rear projection of No 129 and the garden/rear amenity space of No 133 to the east. Based upon the evidence before me No 133 comprises a commercial unit on the ground floor frontage and a residential property to the rear and above the unit. It has side facing windows on the ground floor of an outrigger serving a kitchen/living area, looking over the side return to a garden which based upon the evidence before me and paraphernalia at my visit is in domestic use.
13. The garden of No 133 is north facing with some outlook to its north and more limited outlook to the east and west. To the west the existing appeal site building extends approximately 3.3m rear of the ground floor of No 133 at single storey height. This proposal would result in the sizeable largely blank rendered elevation of the appeal site building extending an additional approximately 4.5m depth at a height of 3m a short distance from the boundary with the garden.
14. Given the depth, height and proximity to the boundary, the proposal would result in a significant increase in built development extending some approximately 7.8m beyond the rear dwelling wall of No 133. As a consequence, the development would create a dominant feature, significantly enclosing and creating an oppressive feeling from the rear garden area of No 133, resulting in a significant and harmful loss of outlook. This would be such that it would result in harmful living conditions for the occupiers of No 133.
15. For the same reasons, given its western direction, notwithstanding the existing rear projection at No 129, the development would create a deep barrier blocking the somewhat limited sun path into the garden. The resulting overshadowing would be for a significant duration in time and extent of the garden during the afternoons at certain times of the year. Based upon the evidence before me, the degree and duration of this would be such that it would be likely to result in harmful living conditions to the occupiers of No 133. Notwithstanding my findings in respect of overshadowing, the limited evidence and single storey height of the extension suggests the amount of overall daylight received from above to the garden would not be affected to such significant extent that it would result in harmful living conditions. Therefore, I do not conclude the development would be harmful in this regard.
16. The rear facing window of No 133 is small and highly obscured, so outlook, daylight and overshadowing would not be harmfully affected from this window. The other nearest windows are side facing and the outlook, daylight and sunlight serving those windows is already highly constrained. The combination of the distance to and angle of visibility to the extension, and backdrop of the gable of No 185 Third Avenue means that the development would not discernibly affect overshadowing, outlook, or daylight from/to those side windows. Therefore, it would not result in harmful living conditions in respect

of the internal accommodation. However, this does not mitigate or outweigh the other harm I have found.

17. For the reasons set out above the development would result in significantly harmful living conditions to the occupiers of No 133 in respect of a loss of outlook and overshadowing to the rear garden/amenity space. Therefore, it would conflict with Policy D4 of the London Plan and Policies S1, S6, SP1, SP2, SP3 and SP8 of the NLP. Amongst other things these seek that development is well designed to maintain acceptable living conditions for the occupiers of neighbouring properties. 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 existing and future users.
18. The appellant has advised me that a number of the policies referred to above do not apply to or are not relevant to this proposal. Having regard to the development before me, its effects and the policies read as a whole, I disagree with the appellant's view in respect of the policies set out above. However, 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. As Policy H1 of the NLP appears to relate to residential proposals, this is also of limited relevance to this main issue.

Other Matters

19. The development lies within a Zone of Influence of the Epping Forest Special Area of Conservation (SAC). The Conservation of Habitats and Species Regulations 2017 (as amended) require where a project may result in a significant effect on a European site (in this case the SAC), the competent authority is required to make an Appropriate Assessment of its implications on the integrity of the European site. The Council advises me the development would not be likely to have any significant adverse effects upon the SAC. However, as the development is not proposing any mitigation or benefits in respect of the SAC, and I am dismissing this appeal for other reasons, I have not considered this matter further.

Planning Balance

20. The development would result in a small economic benefit during construction. Increased floor space would bring economic benefits to the appeal site through increased turnover and at least one additional member of staff, which is consistent with some development plan policy objectives. There is no evidence of a shortage of outlets offering similar goods and services in the area for customers. Overall, I am of the view the economic and social benefits would be limited, attracting limited weight. I have not been provided with substantive information of existing and proposed vehicle movements. As I am advised the development would result in increased employment, it suggests increased turnover, so any overall reduction in vehicle deliveries is likely to be small, attracting a small amount of weight.
21. The new WC would replace a similar facility for the use by staff, so this attracts little weight in favour of the scheme. If I were to assume the existing ramp needs replacing, this aspect of the proposal would ensure access as required by the Equality Act 2010. However, the sizeable rear projection and associated

increase in retail and storage space is not necessary to achieve the accessibility outcomes. Therefore, this matter attracts limited weight.

22. The new ramp, window, mullion, and louvre in a similar configuration to that existing would result in a minor visual benefit to the character and appearance of the area. The Council's report suggests the rear extension could result in an enhancement to character and appearance and biodiversity. Even allowing for other biodiversity measures that might be achieved through suitably worded planning conditions, the effect of the proposed development in respect of these matters would be limited, attracting limited weight.
23. Permission Ref 06/00690/FUL is understood to have been granted in 2006. Since its approval there has been three iterations of the Framework and it pre-dates the NLP by several years. Therefore, the previous permission attracts limited weight. The absence of objections cannot in itself be taken as a measure of a development being harmful or not. As the occupancy of dwellings is transient over time, what may be tolerable to one occupier, may not be tolerable to another. The use of matching low maintenance materials and energy efficient lighting are also more of a neutral matter.
24. The overall policy compliance and benefits of the development attract moderate weight in favour of the scheme. However, the development would conflict with the strategy for the location of town centre and retail uses, be likely to result in harm to the vitality and viability of town and local centres, and would result in significantly harmful living conditions to the occupiers of No 133 in respect of outlook and overshadowing. The magnitude of the harm is such that it attracts significant weight against the scheme, which significantly outweighs the benefits of the development. Therefore, the appeal should not succeed.

Conclusion

25. For the reasons set out above, the development conflicts with the development plan and the National Planning Policy Framework read as a whole. There are no considerations advanced which outweigh these findings. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR