



Appeal Decision

Site visit made on 10 August 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th October 2021

Appeal Ref: APP/G5750/W/21/3271115

72 – 76 Terrace Road, Plaistow, London E13 0PB

- 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 IRFAN KHAN of EASTVIEW PROPERTY SERVICES against the decision of the Council of the London Borough of Newham.
 - The application Ref 20/01810/FUL, dated 20 August 2020, was refused by notice dated 18 December 2020.
 - The development proposed is described as 72 TO 76, TERRACE ROAD, E13 0PB, PART DEMOLITION OF EXISTING PROPERTIES AND PROPOSED SINGLE STOREY REAR EXTENSIONS TO NUMBERS ????? NEW FRONT AND REAR MEWS DEVELOPMENTS FORMING 5No. SELF CONTAINED ONE BEDROOM FLATS AND 4No. TWO BEDROOM MEWS TERRACE UNITS TO REAR.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In the interests of accuracy in the banner heading above I have corrected the address from the application form and decision notice to encompass all three of the street facing dwellings forming part of the appeal site.
3. The appellant has advised during the determination of the application amended plans were submitted, which amongst other things added roof lights to a house and biodiversity notes. I have considered the appeal on this basis.
4. The submitted plans do not show the configuration of the first floor of No 76. The Council's records indicate it is a 2 bedroom dwelling, which the appellant has not disputed.
5. To the rear the dwellings at No 72 benefit from a shared enclosed garden. To the rear of No 74 and 76 is a shared yard type area off which the plans show garage spaces/stores. The appellant suggests these are in a commercial use. I am advised the flat roof of the ground floor projection at No 76 is not structurally capable of use as a terrace. At my visit although part of the yard had been fenced off to provide a rear amenity space for No 74, it is not clear if this is authorised. Therefore, I have considered this appeal on the basis that none of the dwellings have access outdoor space with exclusive use.
6. 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 appellant the opportunity to comment upon the implications of these for their cases.

7. The Council's reasons for refusal refer to conflicts with Policies of the previous London Plan (2016). As it has been replaced by the London Plan (2021), this is reflected in my findings in relation to each main issue below.

Main Issues

8. The main issues are:

- the effect of the development upon the living conditions of the occupiers of Nos 70 and 78 Terrace Road and the future occupiers of the new dwellings, with particular reference to privacy;
- whether the development would provide satisfactory living conditions for the future occupiers of the new dwellings at the rear of the site with particular reference to outlook and the site entrance;
- whether the development would provide satisfactory living conditions for the future occupiers of the new dwellings at the front of the site, with particular reference to internal floorspace and external space provision; and,
- whether the development would provide a suitable mix of dwellings and its effect upon the availability of family housing in the Borough.

Reasons

Living conditions – privacy

9. Standard 28 of the Mayor of London Housing Supplementary Planning Guidance (2017) (the HSPG) expects proposals should demonstrate how habitable rooms are provided with adequate privacy. There would be approximately 12m between the first floor elevations of the front of site dwellings and the new rear of site mews. Whether or not the rear mews development incorporates Juliet balconies, the modest distance between the two sets of dwellings would result in a clear and close proximity intervisibility through first floor windows. Given the short distance the development would result in harmful living conditions to the future occupiers of the development in respect of privacy.
10. Nos 70 and 78 neighbour the appeal site with facades facing the rear mews dwellings at an oblique angle with private back gardens adjacent to the appeal site. There would be a distance of approximately 12m between the facades of the mews dwellings and Nos 70 and 78. Although the angle would be slightly oblique, the distance to the ground floors and part of the rear gardens of Nos 70 and 78 would be considerably closer. The distance, relationship, and angle of visibility, means the mews dwellings would have clear close proximity views into the rear windows and part of the garden space closest to the dwellings. This would result in significantly harmful living conditions to the occupiers of Nos 70 and 78 with reference to loss of privacy.
11. Some of the windows serve bedrooms which are habitable spaces that may be used for a far greater duration than simply at night and early morning. In the vicinity of the appeal site distances between other dwellings is markedly

greater, so based upon the evidence provided, the proposed distance is not comparable with other streets nearby.

12. For the reasons set out above the development would result in unsatisfactory and harmful living conditions to the future occupiers of house 3 and the first floor flats at the front of the site, the first floor of the rear mews dwellings, and the existing occupiers of Nos 70 and 78 with particular reference to privacy. Therefore, it would conflict with Policies S1, S6, SP1, SP2, SP3, SP8 and H1 of the Newham Local Plan (2018) (the NLP) and Policies GG4, D3 and D6 of the London Plan. Amongst other things these require development provides a high quality of design that promotes health and well-being, maintains acceptable living conditions for neighbouring occupiers and ensures suitable living conditions for future occupiers, including with particular reference to privacy. It would also conflict with paragraph 130 (f) of the Framework which has similar objectives.
13. I do not find a direct conflict with Policy D1 of the London Plan which primarily relates to area assessments to plan for future growth. However, this does not mitigate the other harm I have found.

Living conditions – outlook and approach

14. The new rear mews dwellings would be laid out with the bedrooms on the lower ground floor, of which a significant proportion of space would be below the front ground level. The main daylight and outlook to these rooms would be via and to relatively narrow lightwells. The layout plans show planting at the front of these lightwells. Some form of barrier of this nature would be required to prevent overlooking from users of the path being able to clearly look into the bedrooms. The proposed dividing fence between the front and rear dwellings necessary for privacy would also be a short distance beyond the planting.
15. The two bedrooms in each flat are quite deep and narrow and represent a significant proportion of the overall living space in each dwelling. Due to the combination of this, the limited depth of the lightwells and the necessary height of the planting or other barrier, and the fencing, these bedrooms would have a highly restrictive, somewhat steep, and poor quality of outlook. It would be such that it would provide harmful and therefore unsatisfactory living conditions to future occupiers of the four mews dwellings in respect of outlook.
16. The proposed entrance to the rear dwellings through a gated undercroft lined with refuse bins does not necessarily exhibit a high quality of design and approach. However, as it would be accessed via secure gates and given the view that refuse storage could be made acceptable with the imposition of suitably worded planning conditions, I do not find this aspect of the development would be inherently harmful to the living conditions to the future occupiers of the rear dwellings. Therefore, it would not conflict with the policies I have been referred to in respect of living conditions. It would also appear to adhere to Standard 8 of the HSPG which states all main entrances should be visible, identifiable, and directly accessible from the public realm.
17. However, for the reasons set out above the development would result in a poor quality of outlook providing unsatisfactory living conditions to the future occupiers of the rear mews dwellings. This would conflict with Policies S1, S6, SP1, SP2, SP3, SP8 and H1 of the Newham Local Plan (2018) (the NLP) and Policies GG4, D3 and D6 of the London Plan. Amongst other things these

require development is of a high quality of design that promotes health and well-being and ensures suitable living conditions for future occupiers. It would also conflict with paragraph 130 (f) of the Framework and the HSPG which have similar objectives.

18. I do not find a direct conflict with Policy D1 of the London Plan which primarily relates to area assessments to plan for future growth. However, this does not mitigate the other harm I have found.

Living conditions – internal and external space

19. Policy H1 of the NLP expects all new homes should meet the internal space standards of the London Plan, similar to those in the Nationally Described Space Standard (2015) (the NDSS). Policy D6 of the London Plan expects housing development should provide adequately-sized rooms, referring to table 3.1 which sets out similar standards as the NDSS and HSPG.
20. Even if I were to take the view that all of the floorspace is above 1.5m in height, at 89 sqm the proposed new 4 bedroom maisonette (flat 2) provides considerably below the standard set out in London Plan and NDSS of 115 sqm of internal floorspace. While all bedroom spaces are above the minimum size, the kitchen is of limited size and is the only communal room, and the internal storage space is only a third of the level expected to be provided. Therefore, the 4 bedroom maisonette would not provide satisfactory living conditions for the future occupiers.
21. Given the large size of the 6 bedroom dwelling (house 3) I do not find the absence of internal storage space to be harmful to the living conditions of future occupiers, as this could be secured through the imposition of a suitably worded planning condition. The dwellings referred to as flats 4, 5, 6 and 8 in the Council's table provide above the minimum internal overall space requirements and a minimum of 1 sqm of internal storage space. Flat 7 is only 0.5 sqm below the standard. These flats provide a reasonable level and shape of internal space, therefore I do not regard the minor deficiency of storage or other space, would result in harmful living conditions for future occupiers.
22. Policy H1 of the NLP expects homes should provide external private open space compliant with the HSPG. Proposed flats 2, 6, 7 and 8 would not benefit from any private external amenity space. A minimum of 5 sqm is required for the 1 bedroom dwellings and 10 sqm for the 4 bedroom dwelling by the HSPG, which should be of practical shape and utility. Such space is of benefit for household and leisure activities, such as gardening, drying clothes, play space, sitting outside, fresh air, and other hobbies.
23. None of the existing dwellings have genuinely private outdoor space provision at the moment and West Ham Park is a short distance from the appeal site which would provide for some recreational and open space needs of future occupiers. However, such public spaces do not have the same level of privacy and functionality as a private outdoor space, and cannot be used for the same purposes and well-being benefits. Therefore, I am of the view that the existing private outdoor space deficiency at the appeal site does not justify a departure from up to date development plan policies in respect of this matter. Consequently, I find the development would result in unsatisfactory living conditions for future occupiers of Flats 2, 6, 7 and 8.

24. For the reasons set out above the development would not provide satisfactory living conditions to the future occupiers of flat 2 with reference to internal space provision and would not provide satisfactory living conditions for the future occupiers of flats 2, 6, 7 and 8 with reference to external space provision. Therefore, it would conflict with Policies S1, S6, SP1, SP2, SP3, SP8 and H1 of the NLP, Policies GG4, D3 and D6 of the London Plan and paragraph 130 (f) of the Framework, the relevant provisions of which I have referred to above.
25. I do not find a direct conflict with Policy D1 of the London Plan which primarily relates to area assessments to plan for future growth. However, this does not mitigate the other harm I have found.

Family housing

26. The existing appeal site layout includes 1no 3 bedroom flat, 1no 6 bedroom maisonette (comprising 4 bedsit rooms and 2 bedrooms) (No 72), and 1no. 6/7 bedroom unit (No 74). As two of the bedrooms in the 3 bedroom dwelling are approximately 6 sqm in size, this unit does not provide a satisfactory standard of family accommodation. The 6 bedroom dwelling has one bedroom under approximately 6 square metres (sqm), however, it would still provide 4+ adequate bedrooms and other rooms. Therefore, it would meet the definition of a larger family dwelling in Policy H4 of the NLP. The 6/7 bedroom dwelling has an internal layout and overall space suitable for family housing (4+ bedrooms). Therefore, there is currently 2no. 4+ bedroom dwellings at the appeal site suitable for family accommodation.
27. The revised new 4 bedroom maisonette and 6 bedroom dwelling would appear to provide adequately sized bedrooms, however, they would result in a limited reduction in the overall floorspace and number of rooms available for family occupation. Furthermore, I have found that the proposed 4 bedroom dwelling would not provide suitable living conditions for the future occupiers with reference to internal and external space provision. Therefore, there would be a conflict with the objectives of Policy H4 of the NLP insofar as this seeks to protect family housing including that providing 4+ bedrooms. However, even if I had found the development to be compliant with H4 this would not overcome or mitigate the other harm I have found.
28. The development would include the provision of 6no. 1 bedroom and 4no. 2 bedroom dwellings. I do not see substantive evidence of an overall over-provision in the local area of such dwellings and the Council has not demonstrated that there is not a future need for such dwellings. Therefore, in this regard I do not find the provision of one and two bedroom dwellings harmful or to conflict with Policy H10 of the London Plan. Policy H1(c) requires proposals on a site capable of delivering more than 10 units comprising less than 39% family housing, are required to be accompanied by a detailed viability appraisal. However, given the nature of the harm I have found in respect of living conditions set out above, the evidence submitted does not demonstrate that this site is capable of delivering more than 10 units.
29. For the reasons set out above, while I find the development would provide a suitable mix of dwellings, it would result in the loss floorspace and have an adverse effect upon the availability of family housing. Therefore, it would conflict with the aims of paragraph 62 of the Framework, Policy GG4 of the London Plan, Policies S1, S6, H1, H4, SP1 and SP3 of the NLP, and the HSPG.

In combination and amongst other things these policies seek to protect existing family dwellings to meet the needs of the local population and contribute to the objective of creating balanced communities.

30. I do not find a conflict with Policy H8 of the London Plan based upon the evidence before me, because overall, this development would not result in an overall loss of residential floorspace.

Other Matters

31. 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 European site. If constructed, this appeal scheme would create an additional 6 dwellings at the appeal site 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.
32. While I note the appellant's dissatisfaction in respect of the pre-application advice, it is clear from the responses this is advisory only, and some of the issues raised are those upon which the Council found the development to be unacceptable. Furthermore, pre-application advice does not represent a formal decision of the Council upon an application. I have determined the development before me on its own merits based upon the evidence before me.

Planning Balance

33. This development would result in a moderate economic benefit during construction and a limited sustained benefit to the local economy once occupied. It would contribute to boosting the supply of housing through the provision of a net gain of six dwellings and it would make a more efficient use of the site. Based upon the limited plans and details before me, the development would result in a minor positive effect to the character and appearance of the area.
34. The little evidence in respect of on-site biodiversity, suggests any biodiversity gains that could be achieved would be small, attracting limited weight. Although it is not demonstrated by the evidence before me, if I were to agree the development would provide some benefit to existing properties by reducing noise from the railway line, given the height of the dwellings and proximity of the railway line, this would be likely to be a very small reduction in noise, attracting a small amount of weight. Therefore, overall, the benefits of the development attract moderate weight in favour of the scheme.
35. The substantive evidence before me does not demonstrate the existing dwellings provide unsatisfactory living conditions for the existing occupiers in respect of floorspace and ventilation. Even if I were to agree that the evidence supports the view that the use of the rear garages is commercial, I see no substantive evidence they result in harmful living conditions through noise and disturbance. Therefore, based upon the substantive evidence before me, these are neutral matters, attracting neutral weight.

36. Notwithstanding the Council's concerns in respect of some aspects of the design of the development, if I were to regard the development as being compliant with policies in these regards, these would be neutral matters. If I were to agree the development was or could be made compliant with policies in respect of daylight serving the dwellings, noise from the railway, renewable energy, cycle and bin storage, access to sustainable transport, and services and facilities, these would all be neutral matters attracting neutral weight. The absence of conflict with policies in respect of dwelling size of some of the dwellings and dwelling mix, and living conditions, are also neutral matters attracting neutral weight.
37. However, the policy compliance and the benefits of the development would not outweigh the significant harm to the living conditions of neighbouring occupiers with reference to privacy, and the harmful living conditions to future occupiers in respect of privacy, outlook, internal and external space provision, and the conflict with policies in respect of family housing that I have outlined above. The harm is such that this attracts significant weight against the scheme, and therefore, significantly outweighs the benefits of the development.

Conclusion

38. The proposed development conflicts with the development plan and the Framework taken as a whole. There are no material considerations, including the policies of the Framework, 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