



Appeal Decision

Site visit made on 14 September 2021

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: Monday 22 November 2021

Appeal Ref: APP/B5480/W/21/3276211

56-58 St Mary's Lane, Upminster, RM14 2QP

- 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 Fraser MacFarlane against the decision of the Council of the London Borough of Havering.
 - The application Ref P0341.21, dated 23 February 2020, was refused by notice dated 17 May 2021.
 - The development proposed is demolition of an existing shop with flat above and the erection of 6 flats with associated parking and amenity.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's adopted policies are contained in its Core Strategy and Development Control Policies (2008). I refer to these collectively as its Development Plan.

Application for costs

3. An application for costs has been made by Mr MacFarlane against the Council of the London Borough of Havering. This application is the subject of a separate decision.

Main Issues

4. The effect of the appeal scheme on:
 - the character and appearance of the area,
 - the living conditions of future occupiers related to pedestrian access into the building
 - the living conditions of future occupiers regarding the provision of private amenity space, and
 - whether or not adequate provision has been made in respect of parking restrictions.

Reasons

Character and appearance

5. The area surrounding the appeal site is primarily residential and includes development of varied styles. These include short terraces along Boundary Road and flatted development along St Mary's Lane.
6. The appeal scheme comprises a residential block of ground and 2 upper floors located on the corner of St Mary's Lane with a vehicular and pedestrian access from Boundary Road. It has been modified from a previous scheme, and amongst other matters now includes a more pronounced set back from the Boundary Road frontage.
7. Even allowing for the varied context of surrounding development the design of the appeal scheme is bold and could add interest to the local area. It would be constructed in brick with tall thin windows which contrast with the soldier courses which define the height of each storey; these serve to emphasise the horizontal dimension to the building and would add a welcome contrast within each elevation.
8. However, set against these considerations, the scheme would appear to occupy a larger proportion of its site area than the existing pattern of residential development in the area. This would add to an unacceptable level of bulk and massing, particularly to the St Mary's Lane frontage given that that it would advance in front of the notional building line established by the relationship of Nos 62-60 St Mary Lane. Whilst the overall height would adhere to the ridge line of the existing property the sense of dominance would be increased because there is no pitched roof which reduces the impact of the existing building on the St. Mary's Lane frontage.
9. Although there is greater set back from the Boundary Road frontage than the previous scheme this does not mitigate for the adverse impacts the scheme would have on the principal frontage.
10. Policy DC61 requires that new development should respond to the local distinctiveness of existing patterns of built form, height, massing and scale. The innovative design has a scale and massing which does not accord with these principles. For the above reasons, I conclude that the appeal scheme is in conflict with the Policy DC61.

Living conditions – amenity space

11. This issue concerns the lack of a dedicated amenity area for the occupant of Flat 1.
12. Adopted policies included in both the London Plan and the Local Plan requires that private amenity space is both readily accessible and private. The London Plan specifies minimum areas.
13. The inclusion of an area of shared amenity space to the rear of the proposed development which cannot be readily accessed by the occupants of Flat 1 undermines the sound basis of adopted policies. It is also difficult to see how the operation of this area could work as private amenity space given that Flat 2 directly overlooks the space.
14. The appellant has drawn my attention to the lack of similar space for the development at No. 60 St Mary's Lane. However, I did not make a detailed visit to this site and no evidence has been presented by either party on the recent

planning history of this scheme to substantiate why an exception may have been made as the appellant states.

15. However, it is apparent that the proposed inclusion of private amenity space in a communal area which is readily overlooked by an adjoining flat does not meet the provisions of adopted policy.
16. For these reasons, I conclude that the design and location of the area of a private amenity space for Flat 1 of the appeal scheme would be in conflict with policies D6 of the London Plan and D61 of the Local Plan.

Living conditions – entrance

17. The proposed pedestrian access to the building will be taken from the Boundary Road entrance. Visitors would enter via an area, described by the Council as an undercroft as it sits below the first and second floors.
18. The Council's concerns on this issue are overstated. An entrance proposed from Boundary Road is acceptable. The distance between the back edge of footpath to the building is around 5-6m and the depth of the 'undercroft' is insufficient to pose safety concerns for visitors using this entrance. There would be clear visibility from the street to the entrance. Personal safety would not be compromised by the proposed design.
19. I find therefore, that this aspect of the proposed scheme would not be in conflict with Policy DC3 and those parts of policies DC61 and DC63 of the Local Plan and Policies D6 of the London Plan which seek to deliver on the principles of Secure by Design.

Parking

20. The Council requires a commuted sum to be paid in order to provide parking restrictions to allow adequate sight lines to the development as required by Policy DC32 of the Local Plan. This requires that new development should not prejudice the safety of highway users. Policies DF1 of the London Plan and DC72 of the Local Plan support the securing of planning obligations.
21. The appellant states that the delivery of the obligation could be addressed through a planning condition or through a Unilateral Undertaking. Given the nature of the requirement an Undertaking would be a preferable suggestion. The appeal has not been accompanied by an Undertaking although the appellant has said that if I were minded to allow the appeal, an Undertaking could be submitted. It is, however, a requirement that Undertakings should accompany the lodging of appeals and in the absence of such an Undertaking I have no evidence before me to demonstrate the capital moneys would be committed.
22. Accordingly, I conclude on this main issue that the appeal scheme is in conflict with Policy DC32 of the Local Plan which requires contributions to protect highway safety.

Planning balance and conclusions

23. Both parties acknowledge that the Council cannot demonstrate a policy compliant amount of housing land. In these circumstances, paragraph 11(d) and footnote 8 of the Framework state that the policies which are the most important for determining the application should be considered as out of date,

and that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.

24. However, the fact that policies have to be considered as out of date does not mean that they carry no weight. To carry weight policies must be consistent with the Framework, as explained in Paragraph 219 which amongst, other things, explains that the closer that policies in the plan are to policies in the Framework, the greater weight that may be given to them. As such it is perfectly possible for policies which are deemed out of date for reason of an inadequate land supply to still carry significant weight.
25. The most important policies, where there is a conflict with the appeal scheme, are DC3, DC32, DC61, DC63 and DC72 of the Local Plan and Policies D6 and DF1 of the London Plan. Although the Council has quoted Policy D11 of the London Plan it is unclear the reason for this.
26. Policy DC3, DC61 and DC63 are consistent with Paragraphs 126 and 130 of the Framework which require that high quality, beautiful and sustainable buildings and places should be achieved through the planning system and that new development should be sympathetic to local character. Policies DC32 and DC63 identify closely with Paragraphs 92 and 110 of the Framework in respect of ensuring that development proposals achieve safe places and suitable access to sites.
27. Policies D6 of the London Plan is consistent with the Paragraph 130 of the Framework which requires new development to have a high standard of amenity for residents. Other policies including DF1 of the London Plan and DC72 are consistent with the Framework being explicit in their statement of the 3 tests for planning obligations included in Paragraph 57 of the Framework.
28. Given the extent to which adopted policies are consistent with the Framework I accord significant weight to the conflict between the appeal scheme and the adopted policies.
29. Set against the conflict with adopted policy, the appeal scheme includes a range of benefits when assessed against the policies of the Framework as a whole. In terms of the environmental dimensions of the Framework, it would involve the redevelopment of brownfield land. The site lies on the route of several regular bus services enabling access to both the Upminster and rail stations.
30. The scheme would also result in the creation of additional employment opportunities in the short term through construction jobs.
31. In terms of the social objectives of the Framework the appeal scheme would include 6 dwellings. This would partially address housing need and also contribute to the Council's undersupply of housing land.
32. Despite the potential benefits of the appeal scheme, overall, I conclude that the harm caused in this case would significantly and demonstrably outweigh the benefits identified when assessed against the policies in the Framework taken as a whole. As such the proposed development does not benefit from the Framework's presumption in favour of sustainable development.

33. Bearing all of the above in mind, there are no material considerations, including the Framework, that would indicate that the decision in this case should be taken otherwise than in accordance with the Development Plan. Accordingly, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Stephen Wilkinson

INSPECTOR