



Appeal Decision

Site Visit made on 8 November 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th November 2021

Appeal Ref: APP/U5930/W/21/3272813

Land to the rear of 37 Livingstone Road, Walthamstow E17 9AU

- 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 S Franklin on behalf of Landview Properties against the decision of Waltham Forest London Borough Council.
 - The application Ref 202417, dated 11 August 2020, was refused by notice dated 11 February 2021.
 - The development proposed is demolition of garages and construction of four 2 storey houses and one single storey house to provide 5 x 2-bedroom units with associated refuse and bicycle storages.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of the application that is now the subject of this appeal, the London Plan 2021 was published in March 2021. The main parties to this appeal have had opportunities to comment upon any relevance of this to the outcome of the appeal.
3. It is apparent from the evidence before me that a new draft Local Plan is in the process of emerging. However, I have seen nothing to indicate that this is currently at a stage that should attract anything more than limited weight. I shall determine the appeal on this basis.
4. I have used an amended site address when compared to that given on the application form. This is to accurately reflect that the proposal relates to land situated to the rear of property that addresses Livingstone Road. I am satisfied that no party with a potential interest in the outcome of this appeal is prejudiced by me taking this approach.

Main Issues

5. The main issues are:
 - The effect upon the character and appearance of the area;
 - Whether or not the site would be suitably accessible by emergency services, including for the purposes of firefighting;
 - Whether or not acceptable living conditions for future occupiers of the development would be provided, having particular regard to the availability

of private garden space and the proposed design of first-floor bedroom window openings;

- The effect upon the living conditions of adjoining residential occupiers, having particular regard to outlook and privacy; and
- Whether or not sufficient external lighting details have been provided.

Reasons

Character and appearance

6. The appeal site contains a complex of garages and an associated area of hardstanding. The main body of the site is set back from the highway and situated between two rows of residential development, which respectively address Clarendon Road to the north and Livingstone Road to the south. The local area is typified by the presence of often similarly designed two-storey properties set upon linear rows and towards the front of their plots. A formal residential character and appearance is thus identifiable.
7. The proposed dwellings would take a linear formation and loosely follow the alignment currently followed by the existing garages. The scale and form of each intended dwelling would be suitably respectful of the existing built development that surrounds the site. Even when considered in combination, the dwellings would not appear as unduly bulky. I also reject any suggestion that the scheme's design would be contrived. Instead, whilst incorporative of contemporary features/materials, the proposal would be suitably sympathetic to the makeup of its surroundings. I further note that a scheme of soft landscaping could be secured via condition should the appeal be successful.
8. For the above reasons, the proposal would not cause harm to the character and appearance of the area. The scheme accords with Policy CS15 of the Waltham Forest Local Plan Core Strategy (March 2012) (the CS), Policy DM29 of the Waltham Forest Local Plan Development Management Policies (October 2013) (the DMP) and the Urban Design Supplementary Planning Document (February 2010) (the SPD) in so far as these policies and guidance require that new development should respond positively to the local context and character.

Accessibility for emergency services

9. The site's access is not of sufficient width to accommodate standard-sized fire appliances. Even so, the main body of the site is setback a relatively limited distance from Livingstone Road. Thus, it would be realistic to anticipate that the necessary equipment to extinguish a fire could be transported from the highway to the positions of the proposed dwellings in a timely manner if needed to be.
10. The London Fire Brigade (the LFB) has not raised an objection to the scheme. It is also my understanding that, with respect to other developments in the Borough where constrained access opportunities have applied, the LFB has recommended the fitting of sprinkler systems to slow the spread of any future fire. I am satisfied that such an approach at this site would be fit-for-purpose. It is also relevant to note that the appellant has sounded a commitment to fund amended road markings at the site's access, which would promote the availability of waiting opportunities for emergency vehicles. These measures could be secured via planning conditions should the appeal be successful.

11. For the above reasons, the site would be suitably accessible by emergency services including for the purposes of firefighting. The proposal accords with Policy CS15 of the CS and Policy DM29 of the DMP in so far as these policies require new development proposals to incorporate high quality and inclusive design measures to create an attractive, safe, healthy, accessible and sustainable environment throughout Waltham Forest.

Living conditions – future occupiers

12. External space standards are set out in the supporting text to Policy DM7 of the DMP and the SPD, where it is indicated that a minimum of 50 square metres of private amenity space should be provided for a two-bedroomed house. It is also set out that a flexible approach shall be taken when applying external space standards, with matters including the character of the area, site constraints and the accessibility of parks and green spaces capable of being taken into account.
13. In the case of each of the dwellings proposed, the extent of private amenity space intended to be provided would fall short of the aforementioned 50 square metre standard. Nevertheless, the site is irregularly shaped and constrained in terms of its positioning between two established rows of residential properties. In this context, readily useable and logically laid out private amenity spaces are proposed. Furthermore, publicly accessible parks are walkable from the site. On balance, I am satisfied that suitable levels of external space would be provided.
14. In the case of each of the four two-storey dwellings intended, rear-facing oriel windows serving bedrooms are proposed at first floor level. These openings would each incorporate a pane of obscured glass, such that outlook would effectively be restricted to via a single side of each oriel window. Having considered the precise design/specification of each such window, I am satisfied that a suitable extent of outlook would be provided for future users of each first-floor bedroom. As a further note, there is no clear reason to find that the intended obscure glazing would restrict access to natural light to any unacceptable degree.
15. For the above reasons, acceptable living conditions for future occupiers of the development would be provided, having particular regard to the availability of private garden space and the proposed design of first-floor bedroom window openings. The scheme accords with Policies CS2, CS13 and CS15 of the CS, Policies DM7, DM29 and DM32 of the DMP and the SPD in so far as these policies and guidance require that external amenity space is well-designed, appropriately located and useable, and seek to ensure that daylight/sunlight, outlook and privacy is maintained for the intended occupants of new habitable rooms.

Living conditions – neighbouring occupiers

16. The SPD sets out minimum separation distances that offer a useful starting point when considering the issue of privacy. As regards between opposing two-storey dwellings, the relevant minimum distance is 20 metres. Furthermore, it is indicated that new developments with habitable rooms overlooking existing private gardens will generally need to be set back 5 metre per storey from the common boundary.

17. To the southern side of the site, it is the case that first-floor windows would not serve habitable rooms. Thus, obscure glazing could be installed to guard against any potential threat of undue overlooking to the detriment of the living conditions of existing adjoining occupiers at Livingstone Road addresses.
18. To the north of the site, 20 metre separation distances to neighbouring two-storey built elements would be broadly adhered to in most instances. It is also relevant to factor in the tight urban environment that currently exists whereby some degree of mutual overlooking is already commonplace. Furthermore, the first-floor oriel window designs that are intended would incorporate a small internal setback and would have the influence of restricting the availability of direct outlook for future occupiers. Thus, in a privacy context, suitable distances of separation would be provided to opposing residential buildings located to the site's northern side.
19. However, the proposed dwellings would be set back only short distances from the site's northern boundary and adjoining private garden spaces. Indeed, the distances that would be achieved would fall noticeably short of the relevant starting point set out in the SPD. Even when factoring in the tight nature of the urban environment, the existence of rear outbuildings and the influence of the oriel window specifications intended (including the provision of obscure-glazed panes that could be conditioned to be non-openable), I find that an undue loss of privacy would inevitably be lost by the residential users of adjoining private garden areas. The Clarendon Road properties that would be most keenly affected would be those that share a boundary with the site at locations immediately adjacent to where two-storey development is proposed.
20. My attention has been drawn to examples of other schemes in the London Boroughs of Croydon and Richmond upon Thames where I understand angled window solutions incorporating obscure glass have been implemented. However, the specific site circumstances in each case have not been clearly illustrated such that it is difficult to draw direct parallels with the proposal now before me. In any event, I must consider the submitted scheme on its own individual merits. I also note here that any new boundary planting to ultimately come forward as part of a soft landscaping scheme would take time to properly establish and could not be relied upon to provide a permanent buffer to views.
21. I am satisfied that the proposed two-storey dwellings would be set far enough back from the site's common boundaries and from neighbouring built form to avoid any overbearing relationship or undue negative effects for neighbouring occupiers in terms of loss of outlook. However, for the above reasons, having particular regard to privacy, the proposal would cause harm to the living conditions of adjoining residential occupiers situated to the north of the site and in locations adjacent to where two-storey development is proposed.
22. The scheme conflicts with Policies CS13 and CS15 of the CS, Policies DM29 and DM32 of the DMP and the SPD in so far as these policies and guidance set out that new development should ensure satisfactory amenity and that privacy is maintained for existing occupants and their neighbours in their homes and gardens.

External lighting

23. The site is surrounded by existing residential uses in a wider urban environment already illuminated to some degree. The extent of lighting required in the interests of safety/security would not realistically be at a level that would hold the potential to have a significant impact upon neighbouring living conditions. In this context, even should bollard lighting be unsuitable at this site, I am satisfied that full details of external lighting could be secured appropriately via planning condition in the event the appeal be successful.
24. For the above reasons, I find that sufficient external lighting details have been provided at this stage. The scheme accords with Policies CS13, CS15 and CS16 of the CS and Policies DM14, DM23, DM24 and DM32 of the DMP in so far as these policies set out that external lighting should only illuminate intended areas and that opportunities for criminal behaviour should be minimised.
25. For the avoidance of doubt, I find that Policy CS6 (Promoting Sustainable Waste Management and Recycling) of the CS and Policy DM13 (Co-ordinating Land use and Transport) of the DMP are of limited relevance to my consideration of this main issue.

Planning Obligations

26. Policy DM16 of the DMP promotes the provision of safe and attractive parking facilities by encouraging car-free and car-capped development in locations that are highly accessible by public transport, are accessible to opportunities and services and/or have high levels of parking stress. The site is located within a Controlled Parking Zone and the Council's Highways Officer has indicated that the scheme must be car-free. Having visited the local area and considered the proposal's potential to generate not insignificant additional on-street parking demand, in the interests of highway safety and promoting sustainable travel choices, I have no reason to disagree with the Highways Officer. However, no drafted/completed legal agreement is before me and, as such, an appropriate mechanism to secure that future occupiers would not be able to be issued with parking permits has not been demonstrated.
27. An Energy and Sustainability Statement (August 2020) is before me that acknowledges a target of 'Zero Carbon' for residential developments in Waltham Forest and sets out that this target will be met by an offset payment. Indeed, this approach would appear consistent with the requirements of Policy DM10 of the DMP. Nevertheless, no mechanism to secure a carbon offset payment is before me.
28. I have not been provided with compelling evidence to justify a contribution towards the monitoring of a Construction Logistics Plan and I am unconvinced that minor off-site highway works need necessarily be secured via legal agreement. However, appropriate mechanisms to secure a car-free development and the payment of a carbon offset contribution are necessary to make the development acceptable in planning terms. Thus, the failure to satisfactorily secure these matters weighs heavily against the proposal.

Other Matters

29. The site lies in proximity to the Epping Forest Special Area of Conservation. The Conservation of Habitats and Species Regulations 2017 (as amended) require that, where a project is likely to have a significant effect on a European

site (either alone or in combination with other plans or projects), the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to undertake an appropriate assessment. For the avoidance of doubt, if I had done so and a positive outcome had ensued it would not have affected the planning balance or my conclusions on this appeal.

30. I have noted objections/concerns raised by interested parties with respect to matters including alleged loss of light, site drainage, noise impacts and the effects upon wildlife and existing trees. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore these matters further here.

Planning Balance

31. In terms of the scheme's benefits, five additional residential units would be created, and the National Planning Policy Framework (July 2021) reaffirms the Government's objectives of significantly boosting the supply of homes and making an effective use of land. However, five additional units of housing would not make a clear or noticeable difference to the Borough-wide housing supply situation and is a benefit that attracts moderate weight. The scheme would also create jobs during the construction phase and would provide support to the local economy once occupied. However, these benefits attract limited weight due to the relatively small scale of development under consideration. Any potentially achievable biodiversity net-gain would be limited and attractive of commensurate weight in the planning balance.
32. The scheme's benefits would, even when considered cumulatively, be fairly modest and would not outweigh the harms and associated policy conflicts that I have identified in the contexts of the scheme's effect upon neighbouring living conditions and its failure to secure car-free development and a carbon offsetting contribution. The proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

33. Whilst I have found that the proposal would be acceptable in a range of different contexts, I have found that it would cause significant harm to the living conditions of neighbouring occupiers situated to the north of the site through loss of privacy. That harm is the overriding consideration in this case, which is further exacerbated by the absence of appropriate mechanisms to secure the development of car-free housing and a contribution towards carbon offsetting.

Andrew Smith

INSPECTOR