

Appeal Decision

Site visit made on 11 February 2022

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th March 2022

Appeal Ref: APP/W5780/W/21/3280125

68 Chigwell Road, South Woodford, London E18 1NN

- 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 Ms Gloria Raymond against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 1655/21, dated 16 April 2021, was refused by notice dated 21 June 2021.
 - The development proposed is 'retrospective planning application for sub-division of flats to form ground floor flat and first floor maisonette'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the ground floor flat provides adequate living conditions for its occupiers, with regard to outlook and privacy;
 - the effect of the residential use on parking;
 - whether adequate amenity space is provided for the occupiers of the ground floor flat; and
 - whether the proposal makes adequate provision towards the mitigation of likely significant effects on the Epping Forest Special Area of Conservation (SAC).

Reasons

3. The appeal property is a two storey building next to the junction of Chigwell Road with Granville Road. The ground floor frontage is in commercial use with the residential use to the ground floor rear and first floor. The surrounding area is predominantly residential in character.
4. Reference is made to a previous unsuccessful application for a similar form of development at the appeal property¹. While I note this earlier proposal and decision, this appeal involves a separate proposal which I have considered on its own merits.

¹ Ref 3413/20.

Living Conditions

5. The ground floor flat includes two windows along the side elevation on Granville Road, one of which serves the living room, the other the kitchen. The bedroom at the rear of the flat has its single window in the rear elevation.
6. I acknowledge the Council's concerns as the windows to the side are relatively small and are directly next to the footpath. However, this arrangement is not unusual with regard to ground floor dwellings on corner plots within urban areas such as this. Indeed, a similar layout is evident to No 70 on the opposite corner of the junction. The use of half-closed blinds, which were in place at the time of the inspection, to these side windows would preserve the occupiers' privacy whilst also allowing natural light and a reasonable outlook from the rooms.
7. The bedroom window is currently visible from the public realm due to the gap in the boundary wall. The plans show this gap being closed with an access gate in the new section of wall. This would prevent any overlooking of the bedroom. This window also has a blind, which would protect privacy with regard to any shared use of the access and space to the rear. While use of a blind obscures the outlook from this window, I am mindful that this room is principally used for sleeping and, therefore, no material harm would arise in this regard.
8. Accordingly, for these reasons, I conclude that the ground floor flat provides adequate living conditions for its occupiers, with regard to outlook and privacy. Consequently, there is no conflict with Policy D6 of The London Plan 2021 concerning housing quality and standards, or with Policies LP26 and LP29 of the Redbridge Local Plan 2015-2030 (2018) which, respectively, concern design quality and internal space standards. Amongst other matters, these policies require that new housing should have adequate standards of privacy and outlook.

Parking

9. The Council's principal concern is that there is insufficient information related to the loss of the existing parking space to the rear of the appeal property and the effect that this would have with regard to on-street parking, which is subject to residents-only restrictions. The proposal includes the closure of the gap in the boundary wall that enables this space to be used, although this had not been undertaken at the time of the inspection.
10. I note the appellant's contention that no cars currently use the assigned space and that the infrequent deliveries to the commercial unit could take place without use of the existing space. However, at the time of the inspection there was a car parked in the space. Moreover, as the Council notes, the storage building to the rear of the appeal property, which is within the red line of the application, appeared to be in residential use. As such, I share the Council's view that there is some lack of certainty with regard to parking related to the existing uses.
11. Policy LP23 of the Local Plan says that where development proposals involve a reduction of existing off-street car parking the developer will be required to demonstrate that sufficient parking will remain in the area to serve local needs.

I accept that deliveries to the existing commercial unit on Chigwell Road are infrequent and that these are not reliant on availability of off-street parking. I note also the Council's comment that due to the unit sizes and location a car-free development would be likely to be accepted at the site. This would accord with Policy T6 of The London Plan 2021, which says that car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport. There is also evidence of the Council permitting development nearby on Chigwell Road, subject to a condition that prevented use of residential parking permits².

12. Therefore, taking this evidence as a whole, it would be possible to consult the parties on a suitable condition that would restrict the use of parking permits for all properties at the appeal site. However, in view of my findings with regard to the following main issues, the appeal's outcome does not turn on this issue and, consequently, there is no basis for further consideration of such a condition.

Amenity Space

13. Policy LP29 of the Local Plan requires a minimum amount of private amenity space for flatted development of 5m² for a 1-2 person dwelling, as in this case. This is the same standard as included in Policy D6 of The London Plan 2021. As the upper floor flat would benefit from a 12m² roof terrace, the 10m² of amenity space that would be provided for the ground floor flat would exceed the minimum requirement in terms of size.
14. However, the policy also includes qualitative requirements relating to the provision of amenity space. It says that such space should be of an appropriate scale to maximise usability and to be of a functional and practical configuration to enable a range of reasonable activities including sitting out, dining, child's play, gardening and social interaction; and be "fit for purpose" in terms of the particular building it serves.
15. I share the Council's concern in this regard that the amenity space is likely to provide a bin storage area for both the commercial unit to the front, the storage unit to the rear (when in use) and the residential unit itself. Access from the rear of the commercial unit is into the amenity space and access to the storage unit is also across the amenity area. Moreover, as already noted, the separate building to the rear appears to be in residential use and, therefore, it is unclear how this would bear on the use of the amenity space. As such, functional use of the space as required by Policy LP29 would be compromised such that it would not be fit for purpose in the terms of the policy.
16. I have had regard to the appellant's contention that there was no previous amenity space provided in relation to the single approved unit at the appeal property and that the proposal is a benefit over the current situation. However, despite the existing use, the proposal is for retrospective permission to create a new unit, which, in accordance with Policy LP29, requires not only adequate space in terms of size but also quality and functionality. I acknowledge that the space might not be used by the operators of the

² Ref 0590/17.

commercial and storage units at the time when residents are most likely to use it. However, this cannot be guaranteed and in any case the need for bin and other storage related to these other uses will affect the quality of the space.

17. I have had regard also to the contention that the appeal property is close to Onslow Gardens, an area of public green space. The appellant draws attention to the Greater London Authority's supplementary guidance, *Shaping Neighbourhoods: Play and Informal Recreation*, which says that proximity to public green space can reduce the reliance on private amenity space. However, this guidance from 2012 pre-dates the more recent requirements for space included in the Local Plan and The London Plan. While the occupiers of the ground floor flat may benefit from use of this public space, development plan policy requires a minimum dedicated area of private space of sufficient quality and functionality.
18. Accordingly, for the reasons given, I conclude that adequate amenity space would not be provided for the occupiers of the ground floor flat and, therefore, the proposal is contrary to Policy LP29 of the Local Plan, as described.

Epping Forest SAC

19. The site is within the zone of influence for likely impacts arising from residential development on the Epping Forest SAC. Natural England has advised that any development within this prescribed area will require suitable mitigation³, in accordance with the Epping Forest Special Area of Conservation Mitigation Strategy.
20. As such, a tariff contribution per dwelling and a monitoring fee is required to mitigate the effects. In these circumstances, I have relied on the appropriate assessment already undertaken by the Council and Natural England and agree that a contribution is necessary to mitigate the likely effects in accordance with the Mitigation Strategy.
21. I acknowledge that the appellant is willing to make the relevant contribution if the appeal were to succeed and that the Council provides a standard letter and payment method for doing so. However, in the circumstances of this case where there is no formal agreement or undertaking through a planning obligation provided as part of the appeal submissions, there is no certainty that the necessary contribution will be made and no means of securing it through the appeal process.
22. Therefore, I must conclude that the proposal fails to ensure that adequate provision would be secured for the mitigation of the likely effects on a protected European site. The Council's decision notice refers to the proposal being contrary to Policies LP33 and LP38 of the Local Plan, but these policies concern the effect of development on heritage matters and trees. I take this to be an error, therefore, and that the correct policy is LP39, which concerns nature conservation and biodiversity, and which specifically refers to the effects of development on the Epping Forest SAC.

³ In accordance with The Conservation of Habitats and Species Regulations 2017, Regulation 63.

Other Matters

23. The National Planning Policy Framework (the Framework), which is a material consideration in planning decisions⁴, requires that plans and decisions should apply a presumption in favour of sustainable development⁵. As this appeal involves housing, I have had regard to the Housing Delivery Test (HDT) results for 2021⁶. The Framework states that the presumption in favour of sustainable development will be engaged where the HDT indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years⁷.
24. The published HDT figures show that the Council delivered 135% of its housing requirement and, therefore, there are no consequential actions arising. However, the Council indicates that the published figures are incorrect and that the correct ones show that 67% of the housing requirement was achieved. As such, I consider that the corrected figures represent a significant material consideration that outweighs the published HDT results in determining this appeal. Consequently, as the delivery of housing was less than 75% of the housing requirement, the presumption in favour of sustainable development is engaged.
25. I have found above, however, that the proposal would not make adequate provision to mitigate the likely effects on a protected European site. In these circumstances, the Framework says that the presumption in favour of sustainable development does not apply and, therefore, I must conclude as such⁸.

Conclusion

26. I have found in the appellant's favour with regard to one main issue, concerning the effect on living conditions and that a suitably worded condition could, subject to consultation with the parties, address the reason for refusal concerning parking. However, these findings do not outweigh those with regard to the other main issues, that adequate amenity space would not be provided for the occupiers of the ground floor flat and that adequate provision has not been secured to mitigate the likely effects on a protected European site. As such, the proposal is contrary to the development plan. The presumption in favour of sustainable development does not apply and there are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR

⁴ Paragraph 2.

⁵ Paragraph 11.

⁶ Published on 14 January 2022.

⁷ Footnote 8 to paragraph 11d).

⁸ Paragraph 182.