



Appeal Decision

Site visit made on 5 August 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2022

Appeal Ref: APP/W5780/W/21/3289514

2 Malmesbury Road, South Woodford, London E18 2NN

- 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 Acacia Ltd against the decision of London Borough of Redbridge.
 - The application Ref 1739/21, dated 19 April 2021, was refused by notice dated 23 June 2021.
 - The development proposed was originally described as 'Conversion of HMO into 4 self-contained flats (1x3 bed, 2x1 bed and 1x2 bed). Ground and first floor rear extension. Loft conversion with rear dormers and front skylights'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have considered the appeal on this basis of the more accurate description of the proposal given on the Council's decision notice and appellant's appeal form, this being 'Excavation/enlargement of basement with two front and one rear lightwells. Two storey rear extension. Loft conversion with two rear dormers and four front skylights. Internal alterations. To create 4x self-contained residential units (1x three bedroom, 1x two bedroom and 2x one bedroom) with associated cycle and refuse storage'.

Main Issues

3. The main issues are:
 - (i) Whether the loss of a community facility would be justified having regard to the requirements of the development plan;
 - (ii) Whether the proposal would provide suitable living conditions for future occupiers with particular regard to internal space; and
 - (iii) The effect of the proposal on the Epping Forest Special Area of Conservation (SAC).

Reasons

Loss of community facility

4. At the time of my visit, the appeal building was vacant. However, the evidence before me confirms that the most recent authorised use of the building was as a children's day nursery. Policy LP17 (Delivering Community Infrastructure) of the Redbridge Local Plan (2018) (LP) sets out amongst other things that where

proposals involve the loss of community infrastructure, this will only be supported where it meets at least one of three specified circumstances as detailed at paragraph 2 (a), (b) and (c) of the policy.

5. Policy S3 (Education and childcare facilities) of the London Plan (2021) states that development proposals should ensure that there is no net loss of education or childcare facilities, unless it can be demonstrated that there is no ongoing or future need.
6. The appellant's 'Marketing report' dated 16 December 2021, indicates that the property has been extensively marketed since November 2019. During this time there were no significant enquiries for the property. I have also considered the other evidence put forward by the appellant in terms of the lack of suitability for alternative community uses including its location away from the nearest town centres, the very poor public transport accessibility rating and the limited on-street parking availability in the area.
7. In addition, I have also seen the appellant's evidence which suggests that child day care facilities are well catered for in the locality. The Council has not provided any contrary evidence to indicate that there is an ongoing or future need for the building to be retained for childcare.
8. Overall, I find the appellant's case more persuasive in this instance and find that the loss of the community facility would be justified having regard to the requirements in Policy LP17 (Delivering Community Infrastructure) of the LP and Policy S3 (Education and childcare facilities) of the London Plan (2021) relating to the loss of community infrastructure.

Living conditions for future occupiers

9. Policy LP29 (Amenity and Internal Space Standards) of the LP confirms amongst other things that all proposals for housing development will be required to comply with the national internal space standards. These are set out in the Department for Communities and Local Government 'Technical housing standards – national described space standard' (2015) (national standard) and include that the minimum floor to ceiling height is 2.3 metres (m) for at least 75% of the Gross Internal Area (GIA). The evidence before me indicates that the proposed flats would meet this minimum requirement.
10. However, the more recently adopted Policy D6 (Housing quality and standards of the London Plan (2021) (London Plan) specifies amongst other things that the minimum floor to ceiling height must be 2.5 metres for at least 75 percent of the Gross Internal Area of each dwelling. The supporting text for this policy states *'To address the impacts of the urban heat island effect and the fact that the majority of housing developments in London are made up of flats, a minimum ceiling height of 2.5m for at least 75 per cent of the gross internal area is required so that new housing is of adequate quality, especially in terms of daylight penetration, ventilation and cooling, and sense of space'*.
11. The evidence before me indicates that only 19% and 23% of the GIA in 'Flats 2 and 3' respectively would meet the minimum ceiling height requirement under Policy D6. Substantial parts of 'Flat 4' would also fall below the minimum requirements of this policy. I attach greater weight to the significant conflict with this more recently adopted development plan policy having regard to the

specific reasons given for the higher minimum ceiling heights for housing developments in London when compared with the national standard.

12. The appellant contends the GIAs for these flats would exceed the minimum policy requirements. Whether or not that is the case, Policy D6 does not include provisions for heights below the minimum requirements to be offset by floor areas.
13. I conclude, the development would not provide suitable living conditions for future occupiers with particular regard to internal space. In that regard it would conflict with the minimum requirements in Policy D6 of the London Plan. For this reason the proposal would also conflict with paragraph 130 f) of the National Planning Policy Framework (the Framework) which includes that planning decisions should ensure that developments create places with a high standard of amenity for future users.

Epping Forest SAC

14. The site is located within the zone of influence for the Epping Forest SAC which is a European designated site. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the Competent Authority to consider whether or not the proposal could adversely affect the integrity of the protected site, either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal. However, I have not been provided with enough information to determine the effects of the development on the SAC and so cannot fulfil my statutory duty under the Habitats Regulations.
15. Notwithstanding the above, I am not aware that the Council undertook an appropriate assessment (AA). However, the Council has indicated that impacts on the SAC resulting from the proposal could be addressed by way of a mitigation payment. The appellant has confirmed they would be willing to make such a payment. Even if I were in a position to carry out an AA, and in the event that an AA indicated that any likely significant adverse effects to the SAC could be addressed through a mitigation payment, the appropriate way to secure a payment would be by way of a planning obligation. Given no such obligation is before me, I would not be in a position to secure such a payment.
16. I conclude, insufficient information has been provided to determine the effect of the proposal on the Epping Forest SAC. In that regard, I cannot be certain that the proposal would comply with the nature conservation requirements of Policy LP39 (Nature Conservation and Biodiversity) of the LP. For the reasons set of the proposal also conflicts with the requirements of the Habitat Regulations.
17. In respect of this main issue, the Council's decision refers to Policy G1 (Green Infrastructure) of the London Plan and Policies LP33 (Heritage) and LP38 (Protecting Trees and Enhancing the Landscape) of the LP. Given these policies specifically relate to heritage, green infrastructure and landscape matters I have not identified conflict with them. In any case, this does not overcome the identified conflict with the national and local requirements relating to habitat protection.

Planning Balance and Conclusion

18. The Council has acknowledged that it has not met its housing delivery requirements over the last three years. In the circumstances, paragraph 11d of the Framework and the presumption in favour of sustainable development is engaged. Planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
19. I have concluded that the loss of the community facility would be justified. In the context of the Government objective to significantly boost the delivery of housing, four self-contained residential units would make a modest but important contribution towards the provision and mix of housing in the area. I also attach positive weight to the potential for some modest social and economic benefits through the development of the site and its future occupation.
20. Given paragraph 11d is triggered, the conflict I have identified with Policy D6 of the London Plan is diminished. However, this policy specifically seeks to address the urban heat island effect on living conditions in London. This is a matter of great importance and, in the context of the Framework, the proposal would not provide suitable living conditions for future occupiers. In addition, insufficient information has been provided to determine the effect of the proposal on the Epping Forest SAC, a matter which further weighs against the proposal.
21. Accordingly, the adverse impacts identified would conflict with the policies of the Framework as a whole and would significantly and demonstrably outweigh the modest benefits identified.
22. Therefore, the appeal is dismissed.

M Russell

INSPECTOR