



Appeal Decision

Site visit made on 4 October 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18/11/2022

Appeal Ref: APP/B5480/W/22/3291546

26A Elm Parade Flats, Elm Park Avenue, Hornchurch RM12 4QQ

- 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 Manickam Thiagarajan against the decision of the Council of the London Borough of Havering.
 - The application Ref P1884.21, dated 28 September 2021, was refused by notice dated 17 December 2021.
 - The development proposed is a ground and first floor rear extension together with loft conversion including rear dormer and hip to gable extension, to provide two one-bed and one two-bed self-contained flats, and retained commercial unit.
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Decision

1. The appeal is allowed and planning permission is granted for a ground and first floor rear extension together with loft conversion including rear dormer and hip to gable extension, to provide two one-bed and one two-bed self-contained flats, and retained commercial unit at 26A Elm Parade Flats, Elm Park Avenue, Hornchurch RM12 4QQ in accordance with the terms of the application, Ref P1884.21, dated 28 September 2021, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are the effect of the proposed development on:
 - The supply of family housing in the area;
 - Living conditions for occupiers of the adjoining dwelling at No 215 Elm Park Avenue, with particular regard to outlook and whether it would be overbearing;
 - Car parking stress in the area.

Reasons

3. The appeal site is a three-storey building within a local shopping area¹, at the end of a terrace with commercial units on the ground floor and flats above. The ground floor unit is accessed from Elm Parade on Elm Park Avenue. The first and second floors are at present a self-contained three-bedroom flat. In common with other flats in the block this is accessed from the rear via a shared lane leading from Benhurst Avenue. As well as providing pedestrian and

¹ Elm Park Minor District Centre.

vehicular access for occupiers of the flats in the block, I saw that the lane is also used by vehicles servicing at least some of the ground floor commercial units. No 26A is entered by a path at the side of a ground floor extension, and then by an external metal staircase leading to a terrace at first floor level.

4. The ground floor retail unit previously extended all the way through to an extension at the back of the building, with the rear part (in an extension which is to all intents and purposes a garage-like concrete panel structure) being used as ancillary storage space. However, prior approval was granted in 2020 for a scheme to convert the rear part of the ground floor to a self-contained one-bedroom flat². I saw on my site visit that the front commercial unit had been adapted in line with that approval, although the residential element in the rear part had not yet been implemented.
5. The appellant is now seeking permission to convert the single flat on the upper floors into two self-contained flats; this would entail extending the rear of the first floor to accommodate a self-contained one-bedroom flat, and converting the loft space with a rear-facing box dormer to create a two-bedroom flat on the second and (new) third floors. The appeal proposal also includes the demolition of the rear ground floor extension and its rebuilding to provide a new one-bedroom flat, rather than the conversion permitted by the 2020 approval.

Family housing

6. Policy 9 of the 2021 Havering Local Plan ("the HLP") is supportive of the subdivision of existing residential properties in certain circumstances, recognising that it has been an important source of additional housing within the borough. Of particular relevance to this appeal, it seeks to prevent the subdivision of properties with a floorspace of 120m² or less, and to ensure that all proposals for subdivision would provide a minimum of one family unit with three or more bedrooms. The supporting text to the policy explains that this threshold has been set to enable the retention of smaller dwellings for "smaller households of single persons and young couples on moderate income".
7. In this case, the proposed development would see a three-bedroom flat replaced with two smaller flats. The planning application form states that the gross internal floor area of the existing flat is 90.5m², which falls some way short of the 120m² threshold set out in the policy. None of the new dwellings which would be created would have three or more bedrooms.
8. The appellant argues that the existing flat is a "poor-quality family unit", and in particular refers to problems arising from the back lane being shared with the ground floor commercial premises and vehicles making deliveries, the lack of private amenity space, the likely difficulty of using the rear access route for anyone carrying pushchairs and suchlike, and the "not great" layout of the flat, it having no lobby, and access and egress only being possible via the kitchen.
9. Based on what I saw on my site visit I consider the size and internal layout of the existing flat to be acceptable, though not ideal, for family use. However, at the time I was there the back lane was congested with vehicles and provided a poor-quality environment. It seemed to me that it would be unlikely to be perceived as a safe or a welcoming place for children in particular, and this

² LPA Ref: J0021.20

would especially be the case on dark evenings or at night. The size and siting of the outside terrace, and its function as the sole accessway to the flat, mean that it is of limited use as a private amenity space.

10. I note the Council's comment that "there are several other family units located at the upper floors even within new development", but my attention was not drawn to any relevant examples with which the existing arrangement could be compared (though I recognise of course that it is basically the same as elsewhere within Elm Parade Flats). The external and access arrangements in particular mean that the appeal property is not particularly well-suited to the comings and goings of family life, especially for a family with small children, and it seems to me unlikely that the Council would be keen to approve a similar property as family housing today.
11. Nevertheless, the proposed development would lead to the loss of a unit of family housing. It would therefore conflict with Policy 9 of the HLP, the relevant aims of which I have described in paragraph 6 above.

Living conditions

12. The next-door dwelling at No 215 Elm Park Avenue is the end property in a short terrace of six two-storey houses to the north-east of the appeal site. It has extensions which wrap in an L-shape around the side and rear at ground floor level, and which adjoin the boundary with the appeal property. It has a rear garden which is separated from the appeal site by a concrete post and timber panel fence.
13. The proposed rear ground floor extension would have a flat roof. It would be built across the full width of the plot to a depth of around 4m, taking it almost level to the rear of the existing extension at No 215 – this part would be around 4m high. It would then continue for a further 9m or so, set in from the boundary by around 1.1m – this part would be approximately 3m high (the Council's officer report suggested that the whole ground floor extension would be around 4m high, but it is evident from the submitted drawings that this would not be the case).
14. The rear extension would be around 2m shorter than the existing building at the rear of the appeal site. The existing rear building has a pitched roof with a ridge height of approximately 2.75m, so the flat-roofed extension proposed would be somewhat taller and bulkier than the building it would replace. Nevertheless, because of the distance it would be separated from the rear garden of No 215, the limited overall increase in height compared to the current building on the site, the height of the existing boundary fence, and the relative orientation of the two properties, I consider that the ground floor extension would not significantly increase overshadowing of the neighbouring garden, nor would it be likely to be seen as overbearing when viewed from the rear of No 215.
15. At first-floor level, the rear extension would be approximately 1m deeper than the rear elevation of No 215. The Council considered that, because of the separation distance involved and the orientation of the buildings, although the first-floor extension may lead to some loss of late evening light to a room at the rear of No 215, overall it would not cause significant harm in respect of overshadowing, or loss of light or outlook. Based on what I saw on site, I agree.

16. Parts of the flat-roofed areas would be used as external terraces, accessed from the first- and second-floor living rooms of the newly-configured flats. The Council considered that this arrangement would be acceptable in terms of its impact on neighbours' privacy, subject to further details of privacy screening being provided. Again, based on my observations on site, I agree with that assessment.
17. Taking these points together, I conclude that the proposed development would not cause significant or unacceptable harm to living conditions for occupiers of the adjoining dwelling at No 215 Elm Park Avenue, with particular regard to outlook and whether it would be overbearing. The proposal therefore complies with Policies 7 and 26 of the HLP; among other things these policies require that new residential development is designed in a way which ensures that the amenity and quality of life of existing and future residents is not adversely impacted, including by preventing unacceptable overlooking or a harmful loss of privacy, outlook, daylight or sunlight.

Car parking

18. The appeal site has a Public Transport Accessibility Level ("PTAL") of 4; this is described by the Council as signifying "moderate" public transport connectivity. Several bus routes stop on Elm Park Avenue immediately next to the appeal site (albeit that getting to the stops from the flats would require a short walk via the back Lane, Benhurst Avenue and St. Nicholas Avenue). Elm Park underground station is also a short distance away.
19. Maximum parking standards are applied by Policy T6 of the London Plan 2021 (which was referred to in the Council's officer report, although not in its decision notice). Policy T6 requires that, for an Outer London location with a PTAL of 4, the maximum parking provision should be 0.5 to 0.75 spaces per dwelling. For the appeal scheme, this would mean providing no more than 2.25 spaces to serve the three dwellings proposed.
20. Among other things, Policy 24 of the HLP sets minimum parking requirements only in areas of Havering with a PTAL between 0 and 1, but this particular provision does not apply to the appeal site. The appeal scheme does not include any dedicated parking provision, but the Council considered that a space (in the rear lane) would still be available, and that the proposed level of car parking provision would therefore be acceptable. I agree.
21. Policy 24 also states that "planning conditions and legal agreements may be used to restrict eligibility for on-street residential and commercial parking permits irrespective of the amount of parking spaces provided off-street as part of the development". The Council considers that such a condition would be necessary to make the proposed development acceptable.
22. I saw on my site visit that the appeal site is not within a controlled parking zone ("CPZ"). While there are parking restrictions in many nearby streets, especially within the shopping area and around the tube station, I saw that there are also large parts of the surrounding residential area, including much of Benhurst Avenue, where on-street car parking (and on-kerb parking) is permitted without permits. The Council's decision notice referred to the need to restrict "future occupiers of the development from obtaining on-street parking permits within the controlled parking zone", but it is not clear from this to

which CPZ it might be referring, nor (therefore) why occupiers of the proposed development would be eligible to apply for permits in the first place.

23. My visit took place during a weekday afternoon, when there were many safe parking spaces available reasonably close to the appeal site. I recognise that there is likely to be a greater demand for parking in those residential areas during evenings and weekends, but there is no substantive evidence before me to demonstrate the extent of any substantial existing parking stress, or that it would be significantly exacerbated by the relatively modest scale of the proposed development. There is also nothing within the Council's evidence to indicate that is considering introducing a CPZ to the relevant area any time soon. Taking all of this together, I consider that in the current circumstances it would not be reasonable or necessary to impose a condition (or to seek a s106 obligation) limiting occupiers' access to permits in respect of a hypothetical possible future CPZ.
24. I conclude that the proposed development would not have a significant harmful effect on parking stress within the area, and it therefore complies with Policy 24 of the HLP which seeks to ensure that an appropriate level of car parking provision is made for development. I also find that there would be no conflict with Policy T6 of the London Plan 2021, which seeks to limit car parking provision in line with levels of public transport accessibility and connectivity, and which applies the maximum standard summarised in paragraph 19 above.

Other Considerations

25. The Council acknowledges that the principle of residential use of the rear part of the appeal site has already been established through the prior approval granted in 2020, and that that approval is a fallback position for the appellant. It also suggested though that, as the appellant considers the existing extension to be of poor quality and is seeking to demolish it as part of this scheme, "there would not appear to be a greater than a theoretical possibility that the development might take place".
26. It is sufficient to say that, based on what I saw on site, I have considerable doubts about the quality of living accommodation which it might be possible to provide within the extension structure as it currently stands. Nevertheless, given my experience of such schemes elsewhere it seems that, if the appeal scheme were not erected, there is a strong likelihood that the prior approval scheme would be built. In my judgement, the appeal proposal would provide better living conditions in the proposed ground floor flat than the fallback scheme. It would also be likely to make a more positive contribution to the built environment than the existing, rather shabby, extension on site at present, and this in turn would go some very small way to improving the character and appearance of the lane at the rear of the appeal site. This is a factor which carries moderate weight in favour of the appeal scheme. I return to this matter in my conclusion below.
27. In its appeal statement the Council drew my attention to the 2021 Housing Delivery Test ("HDT") results, which state that it delivered only 46% of the number of homes required over the three-year period from 2018 to 2021. It also stated that it "cannot currently demonstrate a five-year supply of deliverable housing sites" based on its latest 2019 trajectory.

28. The Council went on to comment that, on the adoption of the HLP in November 2021 a “stepped” housing target had been set which applied retrospectively; under this the Council had delivered 81% of its housing target between 2018 and 2021. It also stated that it is carrying out an “immediate” update of the local plan and a review of its housing trajectory in order to establish its housing land supply position. As a consequence of these actions, the Council had requested that the government recalculate its HDT results, although this had not been done at the time the statement was prepared.
29. The appellant’s submissions did not raise or address matters relating to the implications of the HDT results or the Council’s five-year housing land supply position in respect of this appeal. However, in the absence of any definitive evidence confirming that the Council’s 2021 HDT result has been updated, I find that the presumption in favour of sustainable development set out in paragraph 11d) of the Framework applies. This indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. The Framework seeks to significantly boost the supply of housing. In this light, the provision of a net gain of two dwellings would make only a small contribution to boosting the supply of homes. In respect of other relevant Framework policies, I consider that the scheme would be likely to lead to a higher standard of amenity for occupiers of the appeal building than at present, it would not be harmful to the amenity of others, and there would not be unacceptable impacts on highway safety or the road network.

Planning Balance and Conclusion

31. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
32. The proposal benefits from the “presumption in favour of sustainable development” set out in Paragraph 11d) of the Framework. I have found that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
33. For the reasons I have set out in addressing the first main issue above I consider that, while the existing three-bedroom flat provides an acceptable internal standard of accommodation, there are other factors (notably the access arrangements) which make it less suitable for family use. Furthermore, the appeal scheme would provide better quality living accommodation and would be a more visually attractive development than the prior approval fallback scheme. These two considerations each carry moderate weight in favour of the appeal scheme.
34. I have found that the proposed development would lead to the loss of a family housing unit, and as such would conflict with the provisions of the development plan read as a whole. However, the material considerations identified, including those of the Framework, indicate that a decision other than in accordance with the development plan is appropriate, and that planning permission should be granted.

35. The situation in respect of the HDT results, as summarised in the previous section, appears slightly complex at present. It is therefore also worth adding that, even if I had not applied the provisions of Paragraph 11d) of the Framework, in the light of the other material considerations summarised in paragraph 33, I would have reached the same overall conclusion.

36. I therefore conclude that the appeal should be allowed.

Conditions

37. I have considered the conditions suggested by the Council having regard to the tests in the Framework and the advice in the Planning Practice Guidance. Where necessary I have made minor alterations to the wording and the order in the interests of clarity and effectiveness.

38. In addition to the standard time limit condition (1), in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans (2).

39. Conditions in respect of materials (3), landscaping (4) and boundary treatments (5) are necessary to protect the character and appearance of the area (and, in the case of Condition 5, to protect the living conditions of neighbouring occupiers). I have amended to suggested wording of Condition 3 so that it is clear that it does not relate to the materials of the existing garage-like extension. The Council suggested that the Condition 5 should have effect before the commencement of development, but as no justification for such an imposition was suggested and I have instead timed it so that demolition work can take place ahead of the submission of the required landscaping scheme.

40. A condition is necessary in respect of refuse and recycling storage (6) to protect living conditions for occupiers of the approved development; the conditions relating to working hours (7) and flank windows (8) are necessary to protect living conditions for neighbours. Approval and provision of cycle storage facilities (9) is necessary to promote sustainable transport and to comply with Policy 24 of the HLP. The condition in respect of water use (10) is necessary to comply with Policy SI5 of the London Plan 2021; that in respect of boiler emissions (11) to comply with Policy 33 of the HLP.

41. A condition in respect of accessibility and adaptability (12) is necessary to comply with Policies 7 and 26 of the HLP and with Policy D7 of the London Plan 2021. I have only applied this condition to the proposed ground floor flat as, given the lack of step-free access to the existing flat on the upper floors, it would not in my view be reasonable to apply it to the entire development.

42. For the reasons I have set out in paragraphs 22 to 24 above, I have not imposed the suggested condition in respect of access to car parking permits.

M Cryan

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1411/01A – Location Plan
 - 1411/20C – Proposed Ground Floor Plan
 - 1411/21B – Proposed First Floor Plan
 - 1411/22A – Proposed Second Floor Plan
 - 1411/23B – Proposed Third Floor Plan
 - 1411/24A – Proposed Roof Plan
 - 1411/25 – Proposed Front Elevations
 - 1411/26A – Proposed Rear Elevations
 - 1411/27B – Proposed Side Elevations
 - 1411/28A – Proposed Sections AA
 - 1411/29 – Proposed Block Plan
- 3) All materials to be used in the external construction of the buildings hereby permitted shall match the materials of the existing building on site (not including the existing ground floor rear extension which is to be demolished as part of the scheme hereby permitted).
- 4) No work other than demolition shall take place in relation to any of the development hereby approved until there has been submitted to and approved by the local planning authority a scheme of hard and soft landscaping, which shall include indications of all existing trees and shrubs on the site, and details of any to be retained, together with measures for the protection in the course of development. All planting, seeding or turfing comprised within the scheme shall be carried out in the first planting season following completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.
- 5) Prior to first occupation of the dwellings hereby approved, details of all proposed walls, fences and boundary treatment shall be submitted to, and approved in writing by the local planning authority. The boundary development including the defensive screening system shall then be carried out in accordance with the approved details and retained permanently thereafter to the satisfaction of the local planning authority.
- 6) No part of the development hereby permitted shall be occupied until refuse and recycling storage are provided in accordance with details previously submitted to and approved in writing by the local planning authority. The refuse and recycling storage shall be permanently retained for that purpose thereafter.

- 7) All building operations in connection with the construction of external walls, and other external site works; works involving the use of plant or machinery; the erection of scaffolding; the delivery of materials; the removal of materials and soil from the site, and the playing of amplified music shall only take place between the hours of 8.00am and 6.00pm Monday to Friday, and between 8.00am and 1.00pm on Saturdays and not at all on Sundays and Bank Holidays/Public Holidays.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), no window or other opening (other than those shown on the submitted and approved plans) shall be formed in the flank walls of the buildings hereby permitted, unless specific permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the local planning authority.
- 9) Before the development hereby permitted is first occupied, details of cycle storage facilities shall be provided to the satisfaction of the local planning authority and retained permanently thereafter for the accommodation of cycles visiting the site and shall not be used for any other purpose.
- 10) All dwellings hereby approved shall comply with Regulation 36 (2)(b) and Part G2 of the Building Regulations - Water Efficiency.
- 11) Prior to the first occupation of the development, details shall be submitted to and agreed in writing by the local planning authority for the installation of Ultra-Low NO_x boilers with maximum NO_x Emissions less than 40 mg/kWh. Where any installations do not meet this emissions standard, they should not be operated without the fitting of suitable NO_x abatement equipment or technology as determined by a specialist to ensure comparable emissions. The installation of the boilers shall be carried out in strict accordance with the agreed details and shall thereafter be permanently retained as such. Following installation emissions, certificates will need to be provided to the local planning authority to verify boiler emission.
- 12) The ground floor dwelling hereby approved shall be constructed to comply with Part M4 (2) of the Building Regulations - Accessible and Adaptable Dwellings.