



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: 9 December 2022

Appeal Ref: APP/B5480/W/21/3288678

Land at rear of 42 Broadway Parade, Hornchurch RM12 4RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Zeshan Akram of Orbit London Ltd against the Council of the London Borough of Havering.
 - The application Ref P1313.21, is dated 30 June 2021.
 - The development proposed is the erection of a three-storey building to include 4 x 1-bed and 2 x 2-bed self-contained flats with associated parking, amenity space, and habitable roof space.
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Decision

1. The appeal is dismissed and planning permission for the erection of a three-storey building to include 4 x 1-bed and 2 x 2-bed self-contained flats with associated parking, amenity space, and habitable roof space is refused.

Procedural Matters

2. The description of development in the banner heading and my formal decision above is taken from the appeal form. I have used it in preference to that on the original planning application form as it provides a more accurate description of the proposal.
3. The Council adopted the new Havering Local Plan ("the HLP") on 17 November 2021, replacing the previous 2008 Core Strategy and Development Control Policies DPD. Both main parties' appeal submissions were made in the light of the new development plan, and in my reasons below I have referred to the policies of the HLP.
4. The Council had not determined the planning application prior to the appeal being lodged. However, a draft officer report and decision notice were submitted alongside its appeal statement. Together these indicated that, had the Council determined the application, planning permission would have been refused on three grounds; these form the basis of the main issues identified in the next section.
5. In response to the Council's appeal statement, the appellant's "final comments" proposed amendments to the submitted plans. These included alterations to the form and siting of windows on all three floors, changes to internal layouts, and amendments to the site layout including the removal and reconfiguration of space originally shown as car parking. *The Procedural Guide – Planning*

Appeals – England advises that “if an applicant thinks that amending their application proposals will overcome the local planning authority’s reasons for refusal they should normally make a fresh planning application” (Annexe M.1.1). It adds that “if an appeal is made, the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people’s views were sought” (Annexe M.2.1). As the revised proposal has not been fully considered by the Council or subject to consultation, having regard to the advice in the Procedural Guide as well as the well-known “Wheatcroft Principles”¹, I have not taken the revised plans into account in my decision, as to do so may prejudice other parties.

Main Issues

6. The main issues are whether or not the proposed development:

- Would provide acceptable living conditions for future occupiers, with particular regard to outlook, the quality of amenity space, and potential conflict between users of car parking spaces and the communal cycle and refuse storage areas;
- Would make an overprovision of car parking spaces; and
- Would prejudice the future development of adjoining land.

Reasons

Living Conditions

7. The appeal site sits between the rear of shops on The Broadway and Elm Park Avenue to the west and north, and the four blocks of flats which together make up Diban Court east of the site. There is also a bin store, serving Diban Court, and an electricity substation immediately adjoining the site to the east. The block west of the site has ground floor retail units facing The Broadway and two floors of maisonettes above, although the ground level falls away towards at the rear of the building, where additional lower storeys make it effectively four- or five-storeys high towards the appeal site. The retail buildings to the north have one or two storeys, although the site immediately abuts a small single-storey outbuilding. The Diban Court blocks are all four-storey.
8. The site is essentially an inverted L-shape, though the “arm” of the L (at the northern end of the site) is a triangle which narrows to a point at its western end between the side walls of No 42 Broadway Parade and the Elm Park Post Office at 208-212 Elm Park Avenue. The site is accessed by, and sits at the head of, a service road which leads from Diban Avenue east of the site; this loops around Diban Court to end in front of the appeal site. The main part of the site next to the end of the service road is hard-surfaced and appeared to be used for car parking; the narrowing triangular part was overgrown with vegetation.
9. The proposed development is the erection of a four-storey block of flats, although the appellant prefers to describe it as having three floors “plus loft”; the loft level would be set back from the floors below on all sides and would have a gently pitched roof to the rear (northern) elevation. There would be one

¹ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

one-bedroom flat on the ground floor, the first and second floors would each have one one-bedroom and one two-bedroom flat, and there would be a further one-bedroom flat on the loft floor. There would also be internal parking space for two cars, as well as cycle storage and bin storage areas, within the ground floor. The building's footprint would be set towards the eastern side of the site; the narrowing triangle of the L-shaped plot would be used as external amenity space for Flat 1 on the ground floor. The flats on the upper floors would have external balconies.

10. The south-facing windows serving the habitable rooms of Flat 1 would be immediately adjoining the shared boundary with land at the rear of No 42 Broadway Parade. The adjacent land was being used for car parking and the storage of a large (commercial-size) wheeled bin at the time of my site visit. The two pieces of land are separated by a wire mesh and concrete post fence and. I have not been provided with details of proposed boundary treatments, but in order to provide any effective screening of the neighbouring site any fence (or other proposed solution) would have to be so tall as to almost totally obscure the windows of Flat 1; in any event, the occupiers of Flat 1 would have a very poor quality of outlook. The windows on the same elevation serving Flat 2 on the first floor and Flat 4 on the second floor would suffer from a similarly poor outlook, though to a lesser extent because of their height above the ground level.
11. The triangular "rear garden" serving Flat 1 would measure around 33m² so would, on the face of it, provide an acceptable amount of amenity space for a one-bedroom flat. However, it would be a narrow space hemmed in by the high walls of surrounding buildings on all three sides making it an inhospitable and, for much of the year, a dark and gloomy place. It would also be overlooked from the access deck serving the housing above 37-42 Broadway Parade. Overall, it would be of little practical use as a private amenity space for future occupiers of the development.
12. The cycle and rubbish storage areas would be at the rear of the two internal parking spaces on the ground floor; these would be accessed from the service road via a shutter door, although there would also be an internal pedestrian door from the communal hallway. The submitted drawings show a gap of 1m between the two marked parking bays. While this may theoretically provide sufficient room for bicycles and bins to be manoeuvred between two parked cars, in practice (and recognising that in real life peoples' skills at parking cars, pushing loaded bins and wheeling bicycles may be less than optimal) there would be likely to be conflict between those different uses in such a confined space. The risk of resultant damage to cars and cycles would be likely to lead to disharmony and disputes between residents.
13. Taking all of these points together, I conclude that, as a result of poor outlook and amenity space for Flat 1, and the potential for conflict between users of car parking spaces and the communal cycle and refuse storage areas, the proposed development would not provide acceptable living conditions for future occupiers. The proposal therefore conflicts with Policies 7 and 26 of the HLP and Policies D3 and D4 of the London Plan 2021; among other things, these policies seek to ensure that development exhibits high-quality design and that residential developments provide a good quality of life for future residents. The proposal also conflicts with the requirements of Paragraph 130 of the National

Planning Policy Framework ("the Framework"), which seeks a high standard of amenity for existing and future users.

Parking

14. The appeal site is close to Elm Park underground station, and several bus routes serve The Broadway and Elm Park Avenue. It has a Public Transport Accessibility Level ("PTAL") of 3, which the Council describes as signifying "moderate to high" public transport connectivity. Maximum parking standards are applied by Policy T6.1 of the London Plan 2021. This requires that, for an Outer London location with a PTAL of 3, the maximum parking provision should be 0.75 spaces per (one- or two-bedroom) dwelling. For the appeal scheme, this would mean providing no more than 4.5 spaces to serve the six dwellings proposed.
15. As well as the two internal "undercroft" car parking spaces, the proposed development includes five external spaces, so making seven spaces in total². The provision of a higher level of car parking provision than the maximum sought by the development plan would be likely to support and encourage car-dependency rather than the use of more sustainable means of transport. The appellant suggested that the undercroft spaces could be omitted from the scheme and the space used as "semi-covered communal amenity space". However, given the siting and arrangement of that space, to my mind its potential as amenity space is questionable. Given this concern, and notwithstanding my earlier comments about amended plans in any case, I do not consider that this is a matter which could satisfactorily be addressed by a condition had the scheme been otherwise acceptable.
16. I conclude that the proposed development would make an unjustified overprovision of car parking spaces. As such, it would conflict with Policy T6.1 of the London Plan 2021 which sets maximum parking standards for residential development, and with Policy 23 of the HLP which seeks to provide residents with options to travel sustainably.

Development of adjacent land

17. As I have already described under the Living Conditions main issue above, the proposed development would have windows serving habitable rooms on the south-facing elevation close to, and immediately adjacent to the boundary with, the rear yard of No 42 Broadway Parade. This arrangement would be likely to prevent any development taking place on the adjoining land. I have not been made aware of any specific development proposals for the neighbouring land but, while I note the appellant's comment that "this area will be very unlikely have any approval of any structure above the ground floor level", the effect of the appeal scheme as submitted would be to sterilise that site even for a single-storey extension.
18. A similar situation would apply on the eastern side of the building, where first- and second-floor windows would be on the boundary with the adjacent land currently used as the electricity substation or part of Diban Court's amenity land.

² The Design and Access Statement referred to there being six parking spaces in total, though the submitted drawings generally show five proposed external spaces as well as the two undercroft spaces.

19. I therefore conclude that the proposed development would prejudice the future development of adjoining land; it would therefore conflict with Policy 10 of the HLP which, among other things, seeks to prevent such occurrences where schemes for the development of backland sites are proposed.

Other Matters

20. Outline planning permission was granted in 2020 for four one-bedroom dwellings and associated parking on the appeal site³. Although a new development plan has been adopted in the intervening period, the 2020 permission is still extant. The Council still considers that the principle of residential development is acceptable, though it commented that the acceptability of any particular scheme would still be dependent on other matters including access and amenity; I do not disagree.
21. I have not been provided with full details of the earlier permission, but from the limited information before me it is apparent that it would not include residential accommodation on the ground floor. Although the appellant did not refer to the existing permission as a fallback position, it is in any case apparent that the differences of scale and layout mean that it would be likely to avoid some of the most significant drawbacks of the appeal scheme. It does not therefore carry weight in favour of the appeal proposal.
22. The Council and an interested party also drew my attention to rights of access across the appeal site, including via a spiral fire escape stair which descends from the access deck at the rear of Nos 37-42 Broadway Parade into the narrow triangular area which would become the rear garden of Flat 1. Any legal rights of access would not be affected by a grant of planning permission, but as this matter would not alter my overall decision I have not sought further information.

Planning Balance and Conclusion

23. The Council's evidence acknowledged that the 2021 Housing Delivery Test ("HDT") results, published on 14 January 2022, showed that it had met only 46% of its housing requirement over the three-year period to 2021. 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.
24. As a consequence of these actions, the Council has requested that the government recalculate its HDT results. However, there is nothing before me to indicate whether or not the government has acceded to that request. In line with Footnote 8 of the Framework, I therefore consider that the most important policies for determining the appeal should be considered out of date, and the presumption in favour of sustainable development set out in Paragraph 11d) of the Framework applies. As such, 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.

³ LPA Ref: P1855.19

25. The proposed development would provide six new dwellings, in an area well-located for access to shops, other services and transport links. There would be some additional benefits in terms of employment and use of local businesses during the construction phase. Given the small scale of the scheme, these would represent in total a modest social and economic benefit. However, the development would not provide acceptable living conditions for future occupiers. The overprovision of car parking space, and the sterilising effect on neighbouring land would also not represent high-quality or well-functioning design. The development would therefore conflict with the specific requirements of Chapter 12 of the Framework, which seek to achieve well-designed places, for the reasons I have set out above.
26. Overall, the harm from the development significantly and demonstrably outweighs the benefits when assessed against the Framework taken as a whole. The proposal would not amount to sustainable development in the terms set out in the Framework. The appeal is therefore dismissed.

M Cryan

Inspector