



Appeal Decision

Site visit made on 23 November 2022

by A. Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Appeal Ref: APP/J1535/W/22/3294426

149-151A Queens Road, Buckhurst Hill, IG9 5AZ

- 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 CWR Capital Ltd against Epping Forest District Council.
 - The application Ref EPF/2063/21, is dated 21 July 2021.
 - The development proposed is the front extension above shops and rear extension and side extensions with new roof, together with partial change of use from commercial to residential to create 7 flats, 4 x 1 bedroom, 3 x 2 bedroom, with associated bicycle store and refuse facilities and landscaping.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. The Council does not object to the part change of use or other changes shown on the submitted plans, including the alterations to shopfronts, the installation of terraces and balconies, the bicycle store or refuse facilities. Based on the information before me and my site observations, I have no reason to disagree with those findings.
3. I note that the Council have, since the submission of the appeal, provided an officer report indicating their reasons for refusal had a decision been made. Therefore, I have used that information as a basis for identifying the main issues of the case.

Main Issues

4. The main issues are:
 - whether a satisfactory standard of accommodation would be provided for future occupants, with particular regard to daylight, sunlight and outlook;
 - the effect of the proposed development on protected trees;
 - the effect of the proposed development on the character and appearance of the site and area; and
 - the effect of the proposed development on the living conditions of the occupants of 76 and 78 Westbury Lane, with particular regard to privacy.

Reasons

Standard of accommodation

5. In respect of outlook, both Basement Flat 1 and Ground Floor Flat 3 would be served by windows to the combined living room/kitchen areas and bedroom.
6. Whilst the main outlook from the living room windows at both flats would be towards the rear access area and boundary treatments of Nos 76 and 78, the separation distance here would be reasonable and outlook would not be unacceptable for this urban location. Moreover, landscaping proposals could be secured by condition to improve the environment here. The distance between the side facing window of Basement Flat 1 and the adjoining property is very limited. However, this room is dual aspect. Overall, outlook to the living rooms would be acceptable.
7. In respect of the bedrooms, Basement Flat 1 would be served by a high level rear facing window and rooflight fitted with obscured glass. The bedroom in Ground Floor Flat 3 is indicated as being obscured in the main. Irrespective of the internal space standards provided, and the use of these rooms as bedrooms, which in any case would be regarded as a habitable room, the overall level of outlook would be poor. Occupiers would likely experience an unacceptable sense of enclosure as a result of the layout of the dwellings.
8. In respect of daylight, an internal daylight report has been submitted in support of the proposed development. This uses the average daylight factor (ADF) test and has regard to the Building Research Establishment's (BRE) *'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice'* and BS 8206: Part 2: *'Lighting for Buildings - Code of Practice for Daylighting'*.
9. The report indicates that daylight levels to the proposed bedroom in Basement Flat 1 would be lower than the recommended 1% figure for bedrooms, at 0.5%. Whilst I note daylight levels to the associated living room/kitchen areas would be acceptable, and private amenity space would be provided, the combination of a poor standard of daylight and poor outlook in the bedroom of this flat would provide an unacceptable standard of accommodation for future occupants. The meeting of internal space standard requirements does not overcome this harm.
10. Overall, I conclude that the proposed development would not provide a satisfactory standard of living accommodation to future occupiers, with particular regard to daylight and outlook, contrary to the relevant provisions of Policy CP7 of the Local Plan (LP, 2000 and 2006). These policies, in summary, seek to ensure appropriate living conditions for residents. This is in a similar vein to the objectives of the Framework insofar as living conditions are concerned.
11. Although LP Policy DBE9 is referenced in the Council's reasons for refusal within its officer report, this relates to the effect of the living conditions of the occupants of neighbouring properties and so is not applicable in respect of this main issue. Similarly, Policy DM10 of the Local Plan Submission Version (LPSV, 2017) relates to internal space standards and amenity space, and not for daylight and sunlight, which is a matter in dispute.

Protected trees

12. Several mature trees exist within the appeal site, and the site is subject to a Tree Preservation Order (TPO). The appellant's arboricultural assessment identifies the type and quality of these trees, and the extent of their root protection areas.
13. The mature tree positioned nearest to the existing appeal property, labelled T1 within the submitted documents, is a yew tree which is highly visible from private vantage points and from Westbury Lane. The tree is categorised B with reference to BS5837:2012 *Tree Quality Assessment (Cat Grade)*, and is therefore of moderate quality and landscape value. From my observations on site, I have no reason to disagree with these findings. It is set out that the tree has a further lifespan of approximately 40 years based on current site circumstances.
14. Whilst the report sets out the tree can be adequately protected from harm during development, the Council's tree officer raises concerns about its future viability, particularly in respect of the potential amenity impact of the tree on levels of natural light obtained by future occupants. The submitted internal daylight report takes into account the existence of the retained tree. With the yew tree retained, the level of daylight obtained by the bedroom of Basement Flat 1 is reduced to levels significantly below the recommended levels for a bedroom. Whilst the submitted arboricultural assessment deals with the physical protection of the tree, it does not refer to the potential pressure on the tree from future occupants.
15. From that perspective, the retained yew tree would have a dominating presence on some future occupants, positioned very close to habitable windows. The trees would also likely become a nuisance in terms of debris, particularly to the amenity area of the Basement flat. Consequently, there would be pressure to carry out ongoing works, or ultimately to fell the tree, due to this impact on living conditions. As such, there is a risk to the future viability of the tree, the loss or significant reduction of which would harm the character and appearance of the area.
16. Overall, the proposed development would have a harmful effect on the protected tree positioned close to the rear of the existing appeal property, contrary to the relevant provisions of LP Policy LL10 and LPSV Policy DM5. These policies, in summary, seek to protect trees. This is in a similar vein to the objective of paragraph 174 of the Framework insofar as the protection of trees is concerned.

Character and appearance

17. The appeal site comprises a part three, part four storey building located to the north side of Queens Road. Three commercial units exist to the ground floor with residential accommodation above. The ground floor commercial units project forward of the main bulk of the building to address Queens Road.
18. The area surrounding the appeal site comprises a mixture of residential and commercial properties of a varying scale, period and design. Many have been extended and altered over time, some significantly so. The appeal site itself has been the subject of multiple extensions and alterations over time.

19. The proposed development would consist of modifications and extensions which would change the overall appearance and bulk of the building considerably. It would appear more contemporary in design and result in the extension of the existing building to the front, side and rear, with a change to the roof profile. Consequently, the front elevation of the building, including its upper floors, would be brought closer to Queens Road.
20. Despite these changes, the proposed development has broadly been designed with sensitivity to prevailing building forms, materials and detailing which would assimilate to an acceptable standard with the wider street scene. The bringing forward of the front elevation would respect the prevailing building line whilst remaining distinctive amongst individual buildings along the street.
21. Although crown roofs are not a predominant feature of the surrounding area, several examples form part of established buildings within Queens Road, together with a wide variety of roof profiles. Moreover, the position of the appeal property, between two established and relatively large properties, is such that the crown roof, and the overall depth and mass of the proposed extensions, would not be overly visible from Queens Road or neighbouring properties. Views from Westbury Lane, to the rear, would be limited by reason of intervening development and trees. For these reasons, the proposed development would not appear unacceptably unsympathetic or disproportionate.
22. Overall, the proposed development would have an acceptable effect on the character and appearance of the site and area, in accordance with the relevant provisions of LP Policies CP2, CP7 and DBE10 and LPSV Policies DM9 and DM10. These policies, in summary, seek to encourage high quality design in development. This is in a similar vein to the objectives of the National Planning Policy Framework (the Framework) insofar as good design is concerned.

Living conditions – neighbouring occupants

23. The proposed development would introduce additional rear-facing ground, first, second, and third floor windows which would serve residential accommodation. The proposed development would therefore allow elevated views from upper floor towards 76 and 78 Westbury Lane, which back onto the site. The rear of Nos 76 and 78 feature habitable rooms and private rear gardens.
24. Nevertheless, and notwithstanding that the rear elevation would be brought closer to the rear of the site, elevated rear-facing windows already exist at the appeal property and the additional windows would not result in any unacceptable loss of privacy.
25. Consequently, the proposed development would have an acceptable effect on the living conditions of neighbouring occupants, with particular regard to privacy, in accordance with the relevant provisions of LP Policies CP7 and DBE9 and LPSV Policy DM9. These policies, in summary, seek to protect the living conditions of residents. This is in a similar vein to the objectives of the Framework insofar as living conditions are concerned.

Other Matters

26. In respect of the Epping Forest Special Area for Conservation, I note the appellant's inclusion of a signed unilateral undertaking in relation to the provision of contributions towards air pollution, recreational and monitoring

measures. Habitats Regulation 63(1) states that a competent authority, before deciding to give any consent must make an appropriate assessment to establish likely effects in terms of protected sites.

27. However, given my reasoning in respect of the main issue, there is no duty upon me in that regard and I do not need to consider it further. However, and even were I to find the proposal acceptable in this respect it would be neutral in my determination of the case and would weigh neither for nor against the proposed development.
28. The submitted evidence indicates that the Council cannot demonstrate a five-year housing land supply. As such, and noting the Government's objective of significantly boosting the supply of homes, the provisions of Framework paragraph 11.d are engaged.
29. I have carefully considered the comments raised by the appellant in respect of the benefits of the scheme. These include economic, social and environmental benefits. Economic through the protection and improvement of commercial uses within Queens Road and through the provision of employment during construction and the bringing about of trade to nearby shops and services post occupation. Social through the provision of additional dwellings and providing additional natural surveillance to the street. Environmental through physical enhancements and the efficient use of land.
30. However, these benefits, including the contribution to housing supply in the district, would inevitably be limited given the scale and nature of the development proposed. Accordingly, and given the significant harm I have identified above, the adverse effects of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
31. The fact that there would be no harm to the living conditions of the occupants of neighbouring properties in respect of daylight and sunlight, or that the proposed development would be in accordance with other local policies or Framework provisions is essentially neutral in my determination of the appeal. I note the appellant's reference to pre-application discussions. However, pre-application processes are not determinative to my decision.

Conclusion

32. For the reasons given above, having taken account of the development plan as a whole, the content of the Framework, along with all other relevant material considerations, I conclude that planning permission should be refused and that the appeal should be dismissed.

A. Price

INSPECTOR