



Appeal Decision

Site visit made on 21 November 2022

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th January 2023

Appeal Ref: APP/U5930/W/22/3296356

Garages rear of 39-55 Livingstone Road, Walthamstow, London E17 9AU

- 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 S Franklin on behalf of Landview Properties against Waltham Forest London Borough Council.
 - The application Ref 212554, is dated 3 August 2021.
 - The development proposed is the demolition of 14 garages and construction of 5 houses.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. This appeal stems from the failure of the Council to make a decision on the application within the necessary timescales. The Council has indicated that it did determine the application, by notice dated 8 April 2022, but this was after the appeal was lodged, and I have not been provided with a copy of a decision notice. However, the Council has provided an assessment of the proposal in light of relevant development plan policies, and has set out the reasons why, in its view, planning permission should not be granted. I have used that assessment as a basis for identifying the main issues in this appeal.
3. As part of the proposals, the appellant has provided a Daylight, Sunlight and Overshadowing Report (BVP, 2021). The BVP study followed guidance contained in the 2011 Building Research Establishment (BRE) publication 'Site Layout Planning for Daylight and Sunlight, a Guide to Good Practice'. Since the appeal was submitted, a revised version of the BRE guidance has been issued (BRE 209 2022). This is a comprehensive revision of the 2011 guidance, which it replaces, with a significant alteration to the assessment of daylight and sunlight in new development.
4. The appellant's Daylight and Sunlight Report provides useful information as to the likely effects of the appeal proposal in relation to overshadowing and light levels. However, as it is based on BRE guidance which has since been replaced, I have given little weight to its conclusions in respect of compliance or otherwise with that guidance. If the proposal had been acceptable in other respects, I would have asked for comments from the parties as to the implications of the revised BRE guidance for the scheme. However, as I have found harm in relation to other issues, the issue of daylight and sunlight is not determinative, so it was not necessary to do so.

Main Issues

5. The main issues are:

- whether the proposal would provide an appropriate mix of dwelling sizes, having regard to relevant development plan policies,
- whether the proposal would provide satisfactory living conditions for future occupiers, with particular regard to internal living space and outdoor amenity space,
- the effect on the living conditions of neighbouring and future occupiers, with particular regard to outlook, light and privacy,
- whether the scheme would comply with policies to promote sustainable transport, and
- whether or not the arrangements for refuse storage would be satisfactory.

Reasons

Dwelling mix

6. In order to build economically balanced communities, Policy CS2 of the Waltham Forest Core Strategy 2012 seeks to provide a range of housing types, sizes and tenures in new development, and prioritises the need for larger homes (3 bed plus). Policy DM5 and associated Table 6.1 of the Development Management Policies Local Plan 2013 (Local Plan) set out more detailed requirements on housing mix. Specifically, Table 6.1 indicates that in new development, at least 50% of the dwelling mix should be larger homes (three-bed plus), and that proposals containing only smaller dwellings (one and two bed) will not generally be supported.
7. Under the appeal proposal, the 14 existing garages on the site would be demolished and replaced with 5 two-storey dwellings. Of those, 3 units would be one-bed (two person), and 2 would be two-bed (4 person) houses. As such, the proposal would not comply with the Council's preferred dwelling mix.
8. The appeal site, which is located between the parallel residential streets of Livingstone Road and Clarendon Road, is constrained in terms of size and shape. However, the surrounding area is one of traditional housing which is suitable for families, and there is no explanation as to why a different housing mix, which includes an element of larger units, could not be provided here.
9. I note that this issue was not raised as part of the previous proposal for redevelopment at the site (appeal ref APP/U5930/W/21/3272813), which did not include any 3-bed units either. However, the scheme before me contains a larger proportion of smaller 1-bed units than the previous scheme. Furthermore, the need for larger family homes is clearly expressed in both Policies CS2 and DM5, and the Local Plan states in paragraph 6.3 that the housing mix contained in Table 6.1 will be applied to all housing applications in the borough.
10. In light of the above, I conclude that the proposal would fail to provide an appropriate mix of dwelling sizes. Owing to the lack of larger, family sized

units, it would not meet the requirements for housing mix set out in Core Strategy Policy CS2 and Local Plan Policy DM5.

Living conditions - future occupiers

Internal space standards

11. In order to provide a satisfactory standard of accommodation which is of an adequate size and fit for purpose, minimum internal space standards for new residential development are set out in Policy D6 and Table 3.1 of the London Plan 2021.
12. Houses 2, 3, 4 and 5 would meet the minimum space standards in overall terms. However, at 57m², the overall gross internal floor area (GIA) for house 1 would be slightly below the London Plan requirement of 58m² GIA for a 1 bed 2 person, two-storey dwelling. This is only a small shortfall, and individually, the bedroom and combined living, dining and kitchen space for house 1 would meet the requirement. Nonetheless, Policy D6 is clear that dwellings must provide *at least* the floorspace required in Table 3.1. This is reiterated in paragraph 3.6.2 of the London Plan, which makes clear that the space standards are minimums, which applicants are encouraged to exceed.
13. The appellant has indicated that in house 1, the required 1.5m² internal storage space would be provided under the stairs. However, on my reading of Policy D6, only 1m² of under-stair storage should be counted towards the standard, so there would still be a deficiency. Although only a minor issue, this adds to the concerns about the size of house 1, and the ability of this unit to provide acceptable living conditions for future occupiers.
14. In all of the proposed houses, the living space on the first floor would be provided in the loft space. The proposed sloping roofs would minimise the overall mass of built form, but would also reduce ceiling heights in parts of the first floor living accommodation. From the information provided, it is unclear as to whether the proposal would meet the requirement in London Plan Policy D6, that the minimum floor to ceiling height must be 2.5m for at least 75% of GIA for each dwelling. A failure to meet this requirement, in any or all of the houses, would raise concerns about their ability to provide adequate living conditions, particularly in relation to cooling and ventilation.
15. The proposal would fail to provide satisfactory living conditions for future occupiers in relation to internal living space. House 1 would not meet minimum internal space standards, so the proposal would fail to comply with the requirements for high quality accommodation contained in London Plan Policy D6. There is also uncertainty as to whether any of the units would comply with the Policy D6 in respect of floor to ceiling heights.

Outdoor living space

16. To ensure that new residential development is of high quality and contributes positively to quality of life, Local Plan Policy DM7 requires that all homes should have access to an element of private outdoor space. Specifically, this should meet the minimum standard of 50m² for one and two bed houses.
17. All of the proposed houses would have some private outdoor space, but none would meet the policy requirement, even if communal areas at the front of the development were taken into account. That said, paragraph 8.7 of the Local

Plan indicates that a flexible approach will be taken to the provision of external space, having regard to the characteristics of the site, and the availability of parks and other green spaces nearby.

18. The appeal site is located within a densely built-up area, and whilst there may be parks within walking distance, there is little publicly accessible greenspace in the immediate vicinity. If a level of amenity space below the standard is to be accepted here, it is particularly important that it is of high quality.
19. The irregular shape of the appeal site, and its location at the rear of existing houses, means that arriving at a suitable layout is challenging. Nonetheless, the Urban Design Supplementary Planning Document 2010 (SPD) makes clear that amenity space is an essential part of any residential development, and should be considered as an integral part of the design, with the emphasis on quality and usability.
20. The submitted floor plan shows that private outdoor amenity space for each house would be provided at ground floor level. However, all these spaces would be small, and would be surrounded by boundary walls and the sides of buildings. This would make them feel very enclosed, to the extent which could be oppressive. For the amenity spaces at the rear of the site, on the north side of the proposed houses, this would be compounded by their lack of direct sunlight. The amenity spaces for houses 1 and 2 would be further shaded by the mature trees just outside the site boundary. These small, enclosed and shady spaces would not be particularly attractive.
21. Furthermore, Policy DM7 says that external amenity space should not be awkwardly shaped or very narrow. The amenity areas proposed for houses 3 and 4 would be triangular shaped, with sharply angled corners which would reduce the amount of functional space available. For house 1, the ground floor external area would be a long and narrow space, wrapping around the corner of the building. Again, the shape of this space would limit its usability.
22. The private amenity spaces at ground floor level would not be of high quality, but houses 1 and 5 would also have a roof terrace at first floor level. These terraces would receive more direct sunlight and, owing to their regular size, would provide useable outdoor space. That said, additional screening to the terraces would be required, particularly in the case of the terrace for house 5, to prevent unacceptable overlooking and loss of privacy to neighbouring properties.
23. The communal amenity area at the front of the site would be south facing and would be more open than the private areas to the rear, with good amounts of sunlight. This area could be attractively landscaped, but would not be private, and would serve other functions, including providing the main access for the dwellings. The communal space at the front of the development would not, therefore, compensate for the deficiencies in the private amenity areas, particularly in relation to houses 2, 3 and 4.
24. To conclude on this main issue, the proposal would fail to provide satisfactory living conditions for future occupiers, in relation to both internal and external living space. It would conflict with Core Strategy Policy CS13, which promotes the creation of healthy places that provide satisfactory amenity for future occupiers.

25. None of the proposed houses would comply with the specific requirements for outdoor amenity space contained in Local Plan Policy DM7, but there are particular concerns in relation to the quality of amenity space for houses 2, 3 and 4. The proposed small and enclosed areas of external amenity space for these units, formed from 'left over' spaces in the layout, would fail to comply with Core Strategy Policy CS15 and Local Plan Policy DM29. Together, these policies require the highest quality of urban design, which provides functional development with an appropriate level of well designed, located and usable amenity space.

Living conditions of neighbouring and future occupiers

Outlook

26. The scheme has been designed to limit the impact on neighbouring properties, and the incorporation of gaps between the proposed houses would reduce the mass of built form and retain views through the development. Nonetheless, the proposal would result in a significant increase in built form, very close to the boundaries of properties on Livingstone Road and Clarendon Road which back directly onto the site.
27. Of particular concern is the long side elevation of proposed house 5, which would be sited immediately adjacent to the rear gardens of 49, 51 and 53 Livingstone Road. Despite the presence of outbuildings in those gardens, the introduction of a long, blank wall at two storey height, so close to the shared boundary, would significantly enclose those gardens at the rear. It would have an overbearing impact on the outlook from those properties, with a particularly significant impact on 49 and 51 Livingstone Road.
28. At first floor level, houses 1-4 would all be set away from the shared boundaries with properties on Clarendon Road, but only by a small amount, and the rear elevations of houses 2 and 3 would be very close to the rear boundary of 33 Clarendon Road. The introduction of a two-storey development at the end of the garden would reduce openness and increase enclosure of that outdoor space to a harmful extent. The position of house 4 would have a similarly enclosing effect on the rear garden of 29 Clarendon Road.
29. The outlook from the all the first floor bedrooms of the new houses would be predominately open, and would be acceptable. However, the close proximity of the proposed development to the site boundaries would mean that the main living/dining rooms of houses 1, 4 and 5 would look out onto small and enclosed spaces, surrounded by full height and boundary walls. Whilst none of these rooms would have a particularly attractive outlook, the situation in relation to the main living area of house 1 would be of particular concern, as this room would look out onto a space which was narrow and overshadowed by large trees, with boundary walls only around 1.5m away.
30. Overall, the proposed development would have an unacceptable impact on the outlook from the rear gardens of 29 and 33 Clarendon Road, and 49 and 51 Livingstone Road. In addition, the outlook from the ground floor windows at the rear of houses 1, 4 and 5 would be poor, with house 1 being of particular concern.

Privacy

31. The appeal scheme has been designed to minimise the amount of direct overlooking into neighbouring gardens and properties, by positioning most of the main habitable room windows on the sides of the houses, rather than the front or back. The exception would be the front bedroom windows of houses 2 and 3, which would look directly into the rear garden areas of 41-45 Livingstone Road, a short distance away.
32. In this densely built-up urban area, mutual overlooking of rear gardens is common, and I note that a number of surrounding properties have roof extensions, with dormer windows at second floor level, which increase this effect. Nonetheless, the front windows of houses 2 and 3 would introduce additional overlooking from a different angle, and could result in a loss of privacy for occupiers of neighbouring properties when using their gardens.
33. Furthermore, it appears that the 20m separation distance between facing habitable room windows, suggested in the SPD, would not be met. The proximity between habitable room windows could result in a mutual loss of privacy between proposed houses 2 and 3, and the occupiers of 41-45 Livingstone Road.
34. From the terrace of house 5, it would be possible to see directly into the rear gardens of both 51 Livingstone Road, and proposed house 4. However, if the proposal was otherwise acceptable, this could be mitigated by additional screening to the terrace. This would need to be carefully designed so as to retain a satisfactory appearance to the scheme, and to ensure that the terrace itself was still an attractive space. However, I am satisfied that, if the proposal was otherwise acceptable, an appropriate solution could be found.
35. Views into the rear garden of proposed house 2 would be possible from the terrace of house 1, but this would be from an oblique angle rather than directly. The angle is such that use of the terrace would not result in an unacceptable loss of privacy to the garden of house 2, particularly if additional screening were to be installed.
36. With appropriate mitigation, the proposed terraces would not result in an unacceptable loss of privacy. However, the front bedroom windows of houses 2 and 3 would enable additional overlooking to the rear gardens, and possibly windows, of 41-45 Livingstone Road. This would cause further harm to the living conditions of occupiers of those properties.

Light

37. Given the revisions to the BRE guidance on the assessment of sunlight and daylight, I am unable to reach clear conclusions on the extent to which the proposed accommodation would meet the current guidelines. Nonetheless, I note that all of the main living areas would have large windows, and that in the case of houses 1, 2 and 3, these rooms would be double aspect. Whilst some of the rooms may not be particularly sunny, I am satisfied that all would receive a reasonable amount of daylight.
38. Owing to the orientation of the site, to the south of the existing properties on Clarendon Road, there would be some additional overshadowing to the rear gardens of adjacent properties, especially 31 and 33 Clarendon Road. Of particular concern is the effect on the rear outdoor space at 31 Clarendon

Road. This property has been extended significantly, so only a small outside area now remains, adjacent to the shared boundary with the proposed development. Owing to its small size, additional overshadowing from the proposed development would have a significant and harmful impact on the amount of direct sunshine that occupiers of that property have access to, in their external living area.

39. To conclude on this main issue, the proposed development would fail to provide satisfactory living conditions for neighbouring and future occupiers, with regard to outlook, privacy and light. The proposal would conflict with Local Plan Policy DM32, which requires that daylight/sunlight, outlook and privacy is maintained for existing and intended occupants in their homes and gardens. There would also be conflict with Core Strategy policy CS13, which requires that development provides a satisfactory level of amenity for future users.

Sustainable transport

40. The scheme makes provision for 10 covered and secure cycle spaces. This would be slightly below the minimum requirement of 11 spaces required by London Plan Policy T5 and accompanying Table 10.2. I also note the Council's concern about the height and safety of the proposed tiered structure. Nonetheless, from the submitted drawings it appears that there would be space at the front of the development for cycle parking, which could be provided in a different way. If the scheme was otherwise acceptable, additional details could be required, through a suitable condition, to address this matter. I am satisfied that the requirements of Local Plan Policy T5 could be met.
41. The site is within a controlled parking zone, where on street parking is restricted. When visiting the area, I saw that there is considerable demand for parking spaces in the area. No car parking is proposed as part of the scheme, but to ensure that the development would not lead to increased pressure for on-street parking, a mechanism is needed to restrict future residents from applying for a parking permit.
42. A signed legal agreement (section 106 agreement) would be necessary to ensure that the proposal would be car free, and would meet the tests for planning obligations contained in paragraph 57 of the National Planning Policy Framework. However, such an agreement has not been provided as part of the appeal submissions, so the proposal does not meet the requirements for car free development.
43. The Council has requested financial contributions towards improving sustainable modes of transport and monitoring a Construction Logistics Plan. Little additional information has been provided, so I am unable to conclude that these are necessary to make the development acceptable in planning terms.
44. Notwithstanding that, the lack of a signed legal agreement means that the proposal would not be car free. Even though requirements for cycle parking could be met, the proposal does not make adequate provision to support sustainable forms of transport. The proposed development therefore conflicts with Core Strategy policy CS7 and DMP policy DM16, which together seek to manage parking requirements and promote car free housing.

Arrangements for refuse storage

45. The submitted drawings show that a communal area for bin storage would be located part way along the access drive. Whilst sufficient capacity to store refuse could be provided here, the siting of the bin storage area in this location could cause an obstruction in what is already a narrow access. Furthermore, it would not be conveniently located for residents, particularly for occupants of houses 3, 4 and 5, who would have to carry their refuse a considerable distance to the bin storage area.
46. For these reasons, the proposal would not to provide satisfactory arrangements for refuse storage. It would fail to comply with Core Strategy Policy CS6 and Local Plan Policy DM32. Together, these policies require that new development provides accessible, adequate and well designed storage facilities for residual waste and recycling, in a location that provides safe and convenient access for occupants.

Other Matters

47. The appearance of the dwellings would differ from the surrounding houses, but the design would be not unattractive. The scheme would not cause harm to the character and appearance of the area, and measures would be put in place to protect the existing lime trees close to the site boundary. These matters, which represent a lack of harm, are neutral in the planning balance.
48. Matters of external lighting, which were raised in relation to the previous appeal scheme, have now been satisfactorily addressed, and I note that the London Fire Brigade consider the proposed fire safety measures to be satisfactory. I have no reason to come to a different view.
49. A number of additional concerns have been raised by local residents, including the potential impact on noise and light pollution, and subsidence. As I have found the proposal unacceptable for other reasons, I have not addressed these matters any further.

Planning Balance and Conclusion

50. I have found that the proposal would not provide an appropriate mix of dwelling sizes to meet policy requirements, and in the absence of a signed legal agreement, would not be car free. The proposed arrangements for refuse storage are unacceptable, and the scheme would not provide satisfactory living conditions for future occupiers. House 1 would not meet minimum space standards, and it is unclear whether any of the houses would have adequate floor to ceiling heights at first floor level. There would be a lack of useable external amenity space for houses 2, 3 and 4, and the outlook from the main living room windows of house 1 would be poor.
51. There would also be an unacceptable impact on the living conditions of neighbouring occupiers. The introduction of substantial built form close to the site boundaries would have an overbearing impact on the gardens of 29 and 33 Clarendon Road and 49 and 51 Livingstone Road. In addition, there would be significant overshadowing to the rear amenity space of 31 Clarendon Road.
52. Set against these failings, the proposed development would provide an additional 5 dwellings, which would contribute to the supply of housing in the area. The development would make efficient use of previously developed land,

in an area close to local services and facilities, with good access to public transport. Energy and water efficiency measures would be incorporated into the scheme, with photovoltaic cells to maximise carbon savings for the site. However, these benefits are not sufficient to outweigh the significant short fallings of the scheme.

53. For the reasons set out, I conclude that the proposal would conflict with the development plan. No other considerations outweigh this finding. The appeal is therefore dismissed.

R Morgan

INSPECTOR