



Appeal Decision

Site visit made on 7 November 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/B5480/W/22/3290293

Unit 1A Howard Road, Upminster RM14 2UE

- 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 Sewell against the decision of the Council of the London Borough of Havering.
 - The application Ref P1861.21, dated 21 September 2021, was refused by notice dated 19 November 2021.
 - The development proposed is demolition of the existing commercial unit with the construction of 5 apartments consisting of 4 No x 2 bedroom and 1 No x 1 bedroom with private and communal amenity spaces with cycle storage and bin stores.
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Decision

1. The appeal is dismissed.

Procedural Matters and Main Issues

2. The Council refused planning permission for the proposed development for four reasons, the last of which was that:

"In the absence of detailed contextual elevations and a daylight and sunlight report to demonstrate otherwise the proposed site coverage, scale, bulk and massing along the boundaries of nearby properties would be an unneighbourly, overbearing and an oppressive development which would adversely impact on the residential amenity of adjacent occupiers in terms of outlook and loss of daylight and sunlight to the upper floor windows and overshadowing of the rear gardens of adjoining neighbours [...]"

The appellant's appeal submissions included a Daylight, Sunlight and Overshadowing Assessment ("the DSOA"). Having considered that evidence, the Council accepted that the proposed development would have a "negligible impact on the daylight/sunlight and the amount of overshadowing experienced by the surrounding neighbours". It nevertheless maintained its view that the scale, bulk and massing of the proposed development would result in it creating an increased sense of enclosure for, and having an overbearing impact on, neighbouring residents.

3. The same reason for refusal does not refer to a loss of privacy for neighbouring residents. The matter was, however, raised by several interested parties (including occupiers of adjacent properties on Howard Road) both during the planning application consultation and in response to the appeal notification. The

appellant has had the opportunity to respond to these concerns as part of their appeal submissions.

4. Having regard to all the evidence before me, I therefore consider that the main issues are:
 - The effect of the proposed development on the character and appearance of the area;
 - Whether or not the proposed flats would provide acceptable living conditions for future occupiers, with particular regard to the amount of living and storage space, the quality of amenity space, outlook, and privacy;
 - Whether or not the development would provide an appropriate amount of family housing; and
 - The effect of the proposed development on living conditions for neighbouring residents, with particular regard to outlook, loss of privacy, and whether or not it would be overbearing.

Reasons

Character and appearance

5. The appeal relates to an industrial site which comprises three separate single-storey buildings (although they are in a single ownership and use) arranged in an L-shape around a small yard. It lies west of the block comprising Nos 48 to 70 Station Road, and north of Nos 1 and 3 Howard Road. The northern boundary of the site abuts a private car park belonging to The Junction pub (at No 70 Station Road), beyond which lies Station Approach and Upminster railway station.
6. Station Road west and south-west of the appeal site is within Upminster district centre, and is predominantly characterised by three-storey buildings with shops and other commercial uses on the ground floor and offices or flats above (though of course not every building within the centre falls into this pattern). Howard Road east of the appeal site comprises two-storey semi-detached, typically suburban, housing. The site is accessed via a narrow lane between the rear of No 48 Station Road and the side of No 1 Howard Road; this also serves parking and service space at the rear of Nos 48 to 52 Station Road, as well as what appeared to me to be a self-contained commercial or industrial unit at the rear of Nos 54 and 56 Station Road.
7. The proposed development is the demolition of the existing buildings on the site, and the erection of a three-storey block of five flats which would be located towards the northern end of the site. The development would be entered via the lane from Howard Road as at present, which would give access to an entrance courtyard, containing bicycle and bin storage facilities, and a communal garden area, at the southern end of the site. Moving up the building, the east- and west-facing side elevations would step back at each level; the block would have a flat sedum roof.
8. The site is effectively, given its location at the rear of Nos 1 and 3 Howard Road, a backland site; this is not disputed, but as a result the Council considers that the scale of the development should be "subsidiary to [the] houses facing directly onto Howard Road". The proposed block would be around 9m tall,

compared to the existing buildings' maximum ridge height of around 6m. However, the submitted drawings indicate that the overall maximum height of the three-storey flat-roofed block proposed would be broadly similar to that of the two-storey pitched-roof dwellings on Howard Road. It was also apparent from what I saw on my site visit that many of the properties on Howard Road (including Nos 3, 5, 9 and 11) have large box dormers at the rear, which increases their bulk and presence significantly, and the scale of the proposed block of flats would not be dramatically at odds with these neighbours. The scale of the development would also be comparable to the adjacent three-storey buildings on Station Road.

9. The building would be constructed in yellow London stock brickwork at all levels with black aluminium window and door frames, and external black steel railings. While red brick is more prevalent for front elevations in the surrounding area, the use of yellow brick would reflect the material of the existing buildings on the appeal site, and indeed the adjoining rear elevations of Nos 60 to 64 Station Road. There would be some relatively substantial areas of glazing on the front (southern) and rear (northern) elevations, but these would not be so large as to be discordant or dominant features when considered within the context of the building as a whole.
10. The proposal would result in the appeal site being more densely developed than the neighbouring housing on Howard Road, particularly when compared with the properties east of No 5 which generally have long gardens backing onto the railway station approach and, beyond that, the station's car park. However, I consider that the appeal site's location immediately adjoining the district centre boundary makes it the type of site where some limited intensification may not be inappropriate, and in this light the proposed scheme would not amount to an unacceptable overdevelopment of the site.
11. Taking all of this together, I conclude that the proposed development would not have an unacceptably harmful effect on the character and appearance of the area. It would therefore comply with Policies 7 and 26 of the 2021 Havering Local Plan ("the HLP"), and with Policies D3 and D4 of the London Plan 2021. Among other things, these policies seek to ensure that residential development is well designed, respects and complements the identity and character of the local area, and responds appropriately to distinctive local building forms and patterns of development. I find no conflict with Policy 3 of the HLP, which is supportive of both the re-use of brownfield sites for housing, and the development of residential and mixed-use schemes close to stations where they would be compatible with the character of the local area.
12. The proposal would also comply with the requirements of the National Planning Policy Framework ("the Framework") in these respects, notably the provisions of Chapter 12 which seek to achieve well-designed places.

Living Conditions – future occupiers of the development

13. The space standards for residential development which are applied by Policy 7 of the HLP and Policy D6 of the 2021 London Plan reflect the Nationally Described Space Standard ("the NDSS")¹. There is some disagreement between the two main parties on the internal space within the five proposed dwellings.

¹ "Technical housing standards – nationally described space standard", Department for Communities and Local Government 2015

By the appellant's calculation, Unit 4 (which would occupy part of both the first and second floors) would have a gross internal floor area ("GIA") of 78m², falling 1m² short of the minimum GIA required by the NDSS; the Council calculated the shortfall for Unit 4 to be slightly larger at 2m². The Council also calculated that there would be a shortfall of 1m² for each of Unit 1 and Unit 2, while the appellant considered that those units would respectively meet and slightly exceed the requirements of the NDSS in terms of living space.

14. There is nothing before me which clearly explains the discrepancy between the two main parties' floorspace calculations, although I note the appellant's comment that "the architect works on a CAD-based system and can therefore provide an assurance that all the measurements are accurate and have been checked". Nevertheless, even working from the appellant's figures there would be a shortfall in living space provided in Unit 4. The argument that as Unit 4 is spread over two floors "the standard is disproportionately higher" does not justify a shortfall in internal space, as the NDSS reflects the need for larger amounts of circulation space within multi-storey dwellings.
15. It is clear from the Council's evidence that its concerns about compliance with the space standard also relate to the provision, or lack of provision, of built-in storage space; this is also a requirement of the NDSS. While the submitted drawings show that all Units would have some built-in storage space, measurements have not been provided. However, by visual comparison with the room sizes and items of furniture shown on the drawings it seems unlikely that the storage space provision would comply with the requirements of the NDSS, particularly in the case of Unit 4 where the storage space would be beneath a staircase and so would be of limited height.
16. The NDSS provisions set out the minimum GIA and storage space requirements, rather than maximums. The appellant has not put forward any substantive points to justify permitting an entirely new-build development which would not comply with those minimum requirements.
17. The five proposed units would all have external terraces or balconies at the rear elevation; these would face north towards and across the pub car park. The amount of private amenity space would exceed the minimum requirement applied by Policy D6 of the London Plan 2021. However, their positioning close to the car park and the railway station (including bus turning and waiting areas) beyond would make them very susceptible to vehicle noise and other disturbance such as exhaust fumes, including early in the morning and late at night. The ground floor areas serving Units 1 and 2 would be separated from the car park by open railings and laurel hedging, which would do little to mitigate the negative impacts of the adjoining car park. The quality of the private amenity space would not be that which occupiers of the flats could reasonably expect to enjoy.
18. The proximity to the pub car park combined with the proposed fencing and hedge screening would also result in the occupiers of the ground floor flats (Units 1 and 2) having a very limited, and poor quality, outlook from their combined living/kitchen/dining rooms at the rear of the building.
19. The DSOA submitted as part of the appellant's evidence demonstrates that all of the habitable rooms within the proposed development would have "above target" levels of daylight (calculated with reference to the Average Daylight Factor. I am therefore satisfied that the proposed development would be

acceptable in this respect. However, this would not mitigate the other harm which I have found in respect of living conditions for future occupiers.

20. I conclude that, because of shortfalls in living and storage space (notably for Unit 4), and the limited usefulness of external amenity areas and poor outlook (for Units 1 and 2), the proposed development would not provide acceptable living conditions for future occupiers. It would therefore conflict with Policy 7 of the HLP and Policy D6 of the London Plan 2021; among other things, as well as applying the NDSS as described above, these policies seek to ensure that development provides a high standard of amenity and quality of life for future occupiers.
21. For the same reasons, the proposal would not comply with the requirements of the Framework in these respects, notably the provisions of Paragraph 130 which seek to ensure that development has a high standard of amenity for existing and future users.

Family housing

22. The proposed development would be market housing, and in such cases Policy 5 of the HLP seeks a 64% provision of three-bedroom units, with 16% of units having four or more bedrooms. The supporting text to that policy recognises that meeting the demand for three-bedroom properties "will be challenging" but advises that developers will be expected "to demonstrate how they have sought to maximise the provision of family housing", and that creative approaches in flatted schemes could include "the provision of family units such as duplexes at ground floor level".
23. The appeal scheme proposes four two-bedroom units (two of which would be "three person units", and two of which would be "four person units"), and one one-bedroom unit. The appellant suggests that the proposed two-bedroom units would "make provision for a young family with, say, one or two children", although it is also acknowledged that the scheme "does not provide any three or four-bedroom units which provides for longer-term family accommodation".
24. The appellant argues that the scheme is a "town centre bespoke flatted scheme" which can be differentiated from the "more suburban development" providing "almost exclusively family accommodation" close by. However, the appeal site is not currently in residential use and, as I have already described in paragraph 6 above, it sits between the denser development of the district centre to the west and the suburban housing of Howard Road and other streets to the west. In this light, consideration of the site's location does not in itself amount to a robust demonstration that family housing cannot be provided on the site nor, given that this would be likely to necessitate a scheme with a smaller number of units, have other relevant factors such as viability been put forward to justify the proposed housing mix.
25. Accordingly, I conclude that the proposed development would not provide an appropriate amount of family housing, and the failure to do so has not been adequately justified. The proposal therefore does not comply with Policy 5 of the HLP, the principal relevant provisions of which I have described above, and Policy H10 of the London Plan 2021 which seeks to provide an appropriate mix of housing unit sizes which responds to robust local evidence of need.

Living conditions – neighbouring residents

26. The front (south-facing) elevation of the proposed block of flats would be around 16m horizontally from the nearest facing windows on the rear ground floor of No 3 Howard Road. The policy and guidance to which I was directed did not which prescribe minimum separation distances between habitable rooms, although based on my broader experience 16m would be at, or slightly below, what might be expected. Nevertheless, the submitted design and access statement included sections showing that the building would not obstruct a vertical 25 degree line from the nearest ground floor windows (at No 68 Station Road as well as No 3 Howard Road); again, while this “test” is not set out in any of the policy or guidance to which I was directed, it is in reasonably common use for considering effects on outlook.
27. It is in the nature of towns and cities that buildings are sometimes enlarged or replaced by taller ones. While the appeal scheme would inevitably lead to some loss of outlook from the adjoining dwellings, as a consequence of introducing a three-storey building in place of a single-storey one, I am content that this would not amount to causing significant harm for neighbouring occupiers. For the same reasons I am satisfied that, when viewed from within the neighbouring dwellings, the proposed block of flats would not be harmfully overbearing.
28. Externally, however, I consider that harm would be likely to arise from the very close relationship of the proposed flats with the rear gardens of Nos 3 and 5 Howard Road. The three-storey block would be overbearing and dominant when seen from within the neighbouring gardens. There would also be a significant loss of privacy as a consequence of those gardens being overlooked from the bedrooms of Units 3 and 4 and the living room of Unit 5 at a very short distance. These factors would combine to prevent the occupiers of Nos 3 and 5 Howard Road from enjoying the use of their gardens in a way which they might reasonably expect.
29. I therefore conclude that the proposed development would be overbearing and would unacceptably reduce privacy in respect of the rear gardens of Nos 3 and 5 Howard Drive, and so would cause significant harm to living conditions for the occupiers of those properties. The development would therefore conflict with Policy 7 of the HLP and Policies D3 and D4 of the London Plan 2021 which, among other things, seek to protect residential amenity by preventing unacceptable overlooking or loss of privacy.
30. Again, the proposal would also not comply with the requirements of the Framework in these respects, notably the provisions of Paragraph 130 which seek to ensure that development has a high standard of amenity for existing and future users.

Other Matters

31. There is no dispute between the main parties that the principle of redeveloping the site for residential use is acceptable; it is not within a designated industrial or employment location, and the existing commercial use is not therefore protected. The Council suggested that redevelopment of the appeal site might be better considered as part of a wider redevelopment scheme encompassing the car park and bus stand outside the station to the north; it also referred (almost in passing) to Policy 10 of the HLP in this respect. However, there is

nothing before me to indicate that there is any realistic prospect of, or even consideration being given to, such a scheme coming forward, and this point therefore does not weigh significantly against the appeal scheme.

32. The appellant drew my attention to the approved development of eight flats at 68 Station Road, directly adjacent to the appeal site². I note that that scheme was approved under a different development plan – new versions of both the borough plan and the London Plan been adopted since that development was approved. In terms of the two sites and schemes, No 68 is firmly within, rather than next to, the district centre, and as a result of the alignment of its site has a very different spatial relationship with its neighbours compared to the appeal site. While there are some similarities between the two schemes, notably in terms of the use and broad scale, because of the many differences the granting of permission for the development at No 68 does not justify allowing this appeal.
33. Various other matters were raised by interested parties but, to the extent that they are material, they have been addressed in my consideration of the main issues above. Other issues such as the potential effect of the scheme on property values are not planning concerns. None of the other matters raised have altered my overall decision.
34. Finally, the appeal proposal was described throughout as being “car free”. Although this matter did not form part of the Council’s reasons for refusing the proposal, there is no planning obligation before me which could secure this commitment. However, as I am dismissing the appeal on other substantive grounds it has not been necessary for me to address this matter further on this occasion.

Planning Balance and Conclusion

35. 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.
36. 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.

² LPA Ref: P1669.14

37. The proposed development would provide five 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. I have also found that the proposal's effect on the character and appearance of the area would be acceptable.
38. The appeal scheme would not provide the proportion of family housing sought by the development plan. However, it is recognised that it may not be possible to meet the recommended housing mix on all sites (by the supporting text to Policy 5 of the HLP) and that one- and two-bed units can play a role in freeing up existing family housing (by Policy H10 of the London Plan 2021). In the light of the Council's position in respect of its HDT I consider that, were the lack of family housing the appeal scheme's only shortcoming, the provisions of the Framework would justify allowing the appeal.
39. However, the development would not provide acceptable living conditions for future occupiers in respect of living and storage space, and outlook. It would also be overbearing and cause a harmful loss of privacy for the occupiers of neighbouring dwellings. It would not therefore 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.
40. 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