



Appeal Decision

Site visit made on 11 January 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31/01/2023

Appeal Ref: APP/B5480/W/22/3297864

164 Mawney Road, Romford RM7 7BE

- 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 Mawny (Holdings) Ltd against the decision of London Borough of Havering.
 - The application Ref P1846.20, dated 7 December 2020, was refused by notice dated 1 March 2022.
 - The development proposed is the demolition of existing buildings and redevelopment of the site to provide ground floor commercial space (Class E Shop, Class E restaurant or cafe, Class E office, Class E gym, Class E medical) and residential units within a part 3, part 4, and part 5 storey building with associated parking, private and communal space, cycle storage, secure bike store, refuse space and public realm improvements.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has, in response to the Council's first reason for refusal, submitted an overshadowing diagram and two revised plans of the proposed ground and first floors which have been marked up with measurements. As the diagram and the plans do not alter the proposal in any way, no prejudice would be caused by my consideration of them in determining this appeal. Hence, I have taken them into account in reaching my decision.

Main Issues

3. The main issues are: a) the effect of the proposed development on the living conditions of 160 and 162 Mawney Road, with regards to overlooking/privacy, and sunlight; b) the effect of the proposed parking, delivery and refuse collection arrangements on highway safety on Mawney Road, at the junction of Mawney Road and the A12 and the wider locality; and c) whether the proposed development makes adequate provision in respect of a zero carbon contribution, a training and recruitment scheme and affordable housing.

Reasons

Living conditions

4. The appeal site is currently in mixed use as a car wash, car sales and a small tattoo studio. The area around the site is mixed in character and there are a range of building types, styles and scales.
5. The proposal has been designed to address the prominent junction of Mawney Road and the A12, whilst, at the same time, responding to future and neighbouring residential occupants' living conditions, particularly the two-storey semi-detached properties on Mawney Road.

6. By addressing the two street scenes, the proposal would provide a strong frontage and bring the building line up against the footways, thereby marking the junction positively. The varied scale of the proposed building would also bring interest and respond to the range of building scales found on the roads near to the site.
7. The scale, bulk and massing of the rear parts of the proposed building would step down from the elevation facing the A12. The siting and design of the building seeks to maximise daylight and sunlight whilst appropriately responding to the site's location at the junction. Moreover, by including balconies and communal amenity space for this flatted development, and a good proportion of dual-aspect units, the proposal would draw upon aspects of Policy 7 of the Havering Local Plan (Local Plan) which seeks to ensure a high-quality living environment for residents of the new development.

Overlooking/Privacy

8. There are, however, specific concerns about the relationship between the appeal scheme and the neighbouring properties at Nos 160 and 162. Due to the orientation and number of proposed floors, the relationship varies between them and the rear elevations of Nos 160 and 162 and their rear gardens.
9. There are no locally specific separation distances to measure the scheme against and any potential effect on neighbouring occupants' privacy. Local Plan Policy 7 requires developments not to result in unacceptable overlooking or loss of privacy or outlook; and unacceptable loss of daylight and sunlight. These are important considerations, but they do enable specific judgements to be made based on the proposed design and relationship to neighbouring occupants.
10. The boundary between the appeal site and No 162 would comprise of a brick wall and metal fence. Landscaping would soften the appearance of these, and collectively they would avoid any unacceptable ground level privacy issues. However, the rear elevation of the proposed building would provide numerous elevated vantage points from several residential units towards the rear gardens of Nos 160 and 162. These would not include the windows in the proposed rear elevations as they have been designed to avoid direct overlooking on the gardens and habitable room windows of Nos 160 and 162. Nevertheless, balconies and terraces serving residential units on the second, third and fourth floors would provide elevated views of the rear gardens of Nos 160 and 162.
11. The balconies/terraces on the second floor would be covered, encouraging their use all year round. Future occupants of these units would look down into the rear gardens of Nos 160 and 162 over the proposed boundary treatment and landscaping given the finished floor level of the units on this floor. An unacceptable loss of privacy to the occupants of Nos 160 and 162 would be caused by the proposed development. There is likely to also be a loss of privacy felt by the rear facing habitable room windows in No 162 from persons using the balcony/terrace in the centre of the building.
12. The balconies/terraces on the third and fourth floors would not be covered. This would reduce their year-round appeal, but given the height of these floors, and the proposed layout, future occupants of the units on the third and fourth floors would look down into the rear gardens of Nos 160 and 162. This would cause an unacceptable loss of privacy to the occupants of these neighbouring properties. Occupants of Nos 160 and 162 are also likely to perceive a loss of privacy in their rear facing habitable room windows from the balcony/terrace

serving the central unit on the third floor, though the distance between this unit and Nos 160 and 162 would be acceptable.

13. The communal amenity space/play area would be on a first-floor podium running parallel to the flank garden boundary of No. 162. Whilst the space would be elevated above the rear gardens of Nos 160 and 162, a deep planter and boundary treatment would mean that persons using the communal amenity space/play area would not, subject to appropriate planning conditions, cause a loss of privacy to the occupants of Nos 160 and 162.
14. The type of residential occupation at Nos 160 and 162 does not change the unacceptable harm that the proposed development would cause to the occupants' privacy. The proposal is not therefore of a high quality design in respect of the living conditions of occupants of Nos 160 and 162.

Sunlight

15. The appellant's overshadowing diagram shows that there would be little change between the existing and proposed scenarios. For No. 160, there would be drop of 1% (84% to 83%) between the two scenarios, which are based on the amount of garden received at least two hours of sunlight on 1 March. There would be larger decrease for No. 162 from 83% to 77%. However, given the appeal site's orientation and relationship with Nos. 160 and 162, together with the scale, massing and design of the proposal, I consider that this would not equate to an unacceptable loss of daylight that would materially harm the living conditions of the occupants of Nos 160 and 162.

6 Eastern Avenue

16. I note that the planning application at 6 Eastern Avenue is recommended for approval subject to a legal agreement. I do not know whether permission has now been granted. Even so, the evidence indicates that this site's context differs from the appeal site in that it is not next to residential properties. Therefore, despite any similarities in design terms, the effect of the two developments is not comparable, and the Eastern Avenue scheme does not justify the harm that the proposal would cause in privacy terms.

Conclusion on this main issue

17. Notwithstanding my finding in respect of sunlight, and the flexible approach that Framework paragraph 125 advises in respect of daylight and sunlight, this does not alter or outweigh my conclusion, on this issue, that the proposed development would result in unacceptable overlooking/loss of privacy which would cause significant harm to the living conditions of Nos 160 and 162. Thus, the proposal would not provide acceptable living standards or accord with Local Plan Policy 7; which seeks development to not result in unacceptable overlooking or loss of privacy or outlook.

Delivery and refuse collection arrangements

18. The A12 is a major distributor road extending between the A13 to the west and Lowestoft to the east. It is an urban clearway. The northern boundary of the site abuts this busy dual carriageway with two lanes in either direction. The road near to the site is subject of a 50 mph speed limit and there is a traffic light controlled junction with signalised crossings at the junction of the A12 and Mawney Road, which abuts the site's western boundary.
19. At present there are two vehicle access points. The first is onto the westbound

carriageway of the A12, the other is onto Mawney Road to the south of a central island in the road. The urban clearway on the A12 extends around the junction and as far as No. 162. There are cycle lanes on either side of Mawney Road and wide pedestrian footways. The road is single carriageway, lit and subject of a 30 mph speed limit. Mawney Road and roads near to the appeal site are within a Controlled Parking Zone (CPZ) that operates between the hours of 08:30 to 18:30 Monday to Friday.

20. Local Plan Policy 23 supports development which ensures safe and efficient use of the highway and demonstrates that adverse impacts on the transport network are avoided, or, where necessary, mitigated.
21. Following revisions to the proposed scheme, it is proposed to stop up the existing access onto the A12 from the site. This would leave a single point of access to and from Mawney Road. By stopping up the access onto the A12 and by providing an improved drop kerb with tactile paving crossing at the junction to the north-eastern corner of the site, the proposal would improve existing highway safety conditions. This was supported by Transport for London (TfL).
22. The existing Mawney Road access facilitates movements in and out the site in either direction on the road. Next to the access is a secondary gated vehicle access that provides two off-street parking spaces. Vehicles using this access make use of the primary site access and the footway and need to reverse onto the road and carry out manoeuvres with limited visibility, especially of vehicles turning from the A12 onto Mawney Road.
23. The proposed Mawney Road access would be around 18 metres further away from the junction with the A12. This would improve visibility for every road user. Also, by limiting turning movements to left turn in and left turn out only, the flow of vehicles in and out of the site would be managed to go with the flow of traffic. An extended central island with bollards in the Mawney Road carriageway and appropriate traffic signs could achieve this.
24. Internally, the proposal would include a delivery bay that could accommodate a 4.6 tonne and 7.5 tonne delivery vehicle serving the commercial and residential units. Swept path analysis shows that vehicles of this size could enter and leave the site in forward gear and that there is sufficient space within the site for vehicles to turn.
25. However, vehicles with a height over 2.8 metres, such as refuse vehicles would not be able to enter and leave the site in forward gear due to the site's constraints. Measures could be implemented to prevent larger vehicles from entering the site and causing potential highway safety conflicts if they needed to reverse out onto Mawney Road. Even so, the Council say that refuse vehicles must be able to drive in and out of the site to carry out collections. That is not, however, what is proposed here. Instead, refuse collections are proposed to take place on the Mawney Road frontage near to its junction with the A12. To facilitate this, refuse and recycling material would need to be moved from the ground floor of the northeast section of the building on the day of collection to a designated collection point area on Mawney Road.
26. Six 1,100 litre bins would be used for general waste and recyclable material, with three bins used for each. Alternate weekly collections mean that only three bins would need to be moved to the collection point by Mawney Road each week. The number of bins would not be too dissimilar to the number

collected from existing residential properties on Mawney Road. After the bins are emptied, the bins would be moved back to the internal refuse store. Therefore, they would only be by the road for a short period.

27. Currently, refuse vehicles collect refuse and recycling from properties on Mawney Road. The Council outline that, to minimise safety risks, refuse vehicles currently stop further down the road to collect the bins from Nos 160 and 162. There is, however, no indication how far along the road they stop. However, even if refuse vehicles were to stop in the area identified by the appellant, vehicles would still be able to safely pass a refuse vehicle whilst collections are carried out. This accounts for the proposed extended central island and the increased width taper markings around the site frontage. There are also no other restrictions on Mawney Road that would affect vehicles from being able to safely pass a refuse vehicle whilst collections are carried out.
28. Given the number of extra bins and the existing collection arrangements on Mawney Road, the proposed development would not, in my view, be materially different or require a refuse vehicle to stop on Mawney Road in a different location or for a much longer period. So, whilst I understand the Council's point about vehicles turning into Mawney Road at speed from the A12 when collections are being carried out, the Stage 1 Road Safety Audit does not identify those concerns. I therefore consider that the proposal could, in respect of the proposed servicing arrangements, mitigate the necessary potential adverse impacts on the transport network so that it operates safely and efficiently. These measures would need to be secured by planning conditions and/or a planning obligation. I note TfL arrived at this view, on balance.
29. Measures to secure a highway agreement in respect of: the improvements covering the extended central island in Mawney Road with bollards; central ladder markings; the improved Mawney Road access including pram ramps and tactile paving on either side; the installation of traffic signs; and stopping up the existing access onto the A12, are necessary, directly related to the development and of scale and kind to it in the interests of highway safety. The appellant proposes to secure these measures through a unilateral undertaking (UU). The version of the UU before me is in draft, and it is not therefore a signed or complete document capable of having legal effect. There are also no suggested planning conditions before me that would secure these measures.
30. In the absence of a mechanism to secure these measures, there would be significant risk of conflicts arising between vehicles and vulnerable road users around the Mawney Road access near to the junction with the A12. These conflicts would represent an unacceptable highway safety impact.
31. In terms of the parking arrangements, sufficient cycle storage provision would also be provided. The appeal scheme would also provide seven car parking spaces, two of which would be for persons with disabilities. The proposal, in this respect, would fall below the maximum car parking standards set out in the London Plan. However, these need to be read in the context of the parking restraint aims of the London Plan and the clear direction outlined in London Plan Policy T6 that car-free development should be the starting point for all development proposals in places that are well-connected by public transport.
32. Local Plan Policy 24 confirms 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 appeal site has a public transport accessibility level of 2, but there are bus stops in all directions a short walk away served by four routes. Nearby roads are also the subject of a CPZ which limits the potential for vehicles associated with the proposal not able to park on the appeal site to park elsewhere during certain times. Therefore, this measure is necessary, directly related to the development and of scale and kind to it in the interests of highway safety and to ensure the development is sustainable. Although the draft UU includes such a provision, it is not signed or completed. Hence, it would not have any effect in mitigating the proposal's effect.

33. On this issue, I conclude, that the proposed parking, delivery and refuse collection arrangements would affect the safe and efficient use of the highway in Mawney Road and at the junction of Mawney Road with the A12, and the wider locality. The proposal would not accord with Local Plan Policies 23 and 24 and London Plan Policy T6. Jointly, these support development which ensures safe and efficient use of the highway and demonstrates that adverse impacts on the transport network are avoided, or, where necessary, mitigated; and which strikes an appropriate balance between meeting the parking needs of the site and neither acting as a discouragement to using public transport nor adding to demand for on-street parking.

Zero carbon contribution, a training and recruitment scheme and affordable housing

34. Despite the appellant's willingness to enter into a legal agreement through a UU to secure obligations in respect of a zero-carbon contribution, a training and recruitment scheme and affordable housing, a signed and complete UU is not before me. I note that the appellant has sought the Council's comments on the draft UU, but there is still no completed UU before me.
35. The evidence justifies the various sums sought for the zero-carbon contribution, training and recruitment scheme, and affordable housing. They are all necessary, related directly to the development and fairly related in scale and kind to it. The provision of a review mechanism for the affordable housing contribution is also justified by London Plan Policy 4 which seeks to use such a mechanism to ensure the maximum affordable housing contribution is secured if viability improves over time. As such, they would each satisfy the three tests in Regulation 122(2) of the CIL Regulations 2010 and the tests for planning obligations set out in the Framework.
36. The UU before me is in draft form and although the appellant has tried on multiple occasions to obtain the Council's input, it is the appellant's responsibility to submit a document that secures the contributions. Hence, there is no mechanism before me that would secure appropriate financial contributions towards the provision of a carbon reduction, a training and recruitment scheme and affordable housing. The proposal would conflict with Local Plan Policies 4, 22, 33 and 36 and London Plan Policies H4 and S13.

Planning Balance

The Development Plan

37. I have found that significant harm would be caused in respect of the living conditions of the occupants of Nos 160 and 162 and that the proposal would conflict with Local Plan Policy 7 in this respect.
38. The absence of a signed and completed UU means that the proposal would give

rise to unacceptable impacts to the safe and efficient use of the highway in Mawney Road, at the junction of Mawney Road with the A12, and in the CPZ from increased parking demands. Furthermore, the proposed development would not make adequate provision in respect of a zero-carbon contribution, a training and recruitment scheme and affordable housing. These all result in conflict with Local Plan Policies 4, 22, 23, 24, 33 and 36 and London Plan Policies H4 and S13. I give significant weight to these harms as it means that the proposal's effects are not mitigated, and it would not help address an identified need for affordable housing or provide opportunities for local people to be employed, develop skills and train in high skilled jobs.

39. In the round, the proposed development would be contrary to the development plan when taken as a whole. This is the starting point for decision-making. I will now consider whether there are material considerations that would indicate that my decision should be made otherwise than in accordance with the development plan.

The benefits of the appeal scheme

40. The 2021 Housing Delivery Test (HDT) confirms that the Council falls into the presumption category. Therefore, for decision making, the most important policies for determining the application are deemed to be out-of-date. So, whilst the position is unclear in terms of whether the Council can demonstrate five-year supply of deliverable housing sites in accordance with Framework paragraph 74, Framework paragraph 11d) applies. Even so, based on the HDT result alone, the delivery of new homes has fallen well below those required for at least the last three years by over half. This leads me to consider that there is a substantial shortfall.
41. The 23 residential units proposed would contribute towards addressing that shortfall and provide a mix of unit on a previously developed site. The proposal would also make effective use of the land, and each of the units would be of a suitable size and around two thirds of the homes would be dual aspect, with a number suitable for wheelchair users. Each future occupant would also have access to private and communal amenity space. Given the scale of the development, I attach moderate weight to the provision of the new homes.
42. The proposal would provide a mixture of employment and business space, and the ground floor commercial space would provide flexibility for different users under Class E. This will result in employment opportunities and direct and indirect spending in the local economy. The commercial space would also provide an active frontage and have a more pleasing appearance next to the junction. I attach moderate weight in favour of the proposal on these matters.
43. The mixed-use development would provide time limited economic benefits from jobs through the construction phase and connected spending within the supply chain for example, and ongoing support and spending in the local economy by future occupants and users of the commercial space.
44. The design of the proposal would improve the character and appearance of the area, especially with the way it would address the junction. A high standard of insulation, plus heat pumps and electrical generation from PV panels would form part of the proposal's sustainable design and construction measures, helping reduce carbon emissions. However, the proposed design comes with knock on effects to neighbouring occupants from the proposals, scale, massing and layout. Therefore, the design of the proposed development, when judged

as a whole, cannot carry positive weight even though it has evolved before and during the application process.

45. The addition of landscaping would be welcome on a site that currently does not offer any. This would be a net benefit in biodiversity terms. There are also no environmental, archaeological, landscape or ecological constraints. Moreover, additional Council Tax receipts and CIL payments are forms of mitigation rather than benefits of the proposal.

Other matter

46. I recognise the appellant has progressed the appeal scheme having engaged with the Council and that the scheme has been amended during the process. Be as that may, I have considered the appeal scheme on its planning merits.

Conclusion on the Planning Balance

47. For reasons set out above, the tilted balance as set out in Framework paragraph 11d)ii) is to be applied. I have outlined the weight that the benefits that weigh in favour of the appeal scheme. The proposal would result in benefits, but also it would also cause harm. In this case, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Consequently, the material considerations in this case do not indicate that this decision should be made otherwise than in accordance with the development plan.

48. Accordingly, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR