



Appeal Decision

Site visit made on 19 January 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/B5480/W/22/3297112

28A Wilfred Avenue, Rainham RM13 9TX

- 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 Mr J Kalar against the decision of the Council for the London Borough of Havering.
 - The application Ref P2397.21, dated 1 November 2021, was refused by notice dated 23 February 2022.
 - The development proposed is the demolition of existing detached house and construction of two pairs of semi-detached chalet houses in rear garden.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I am obliged to use the description of the development as included on the planning application form which is different from how the appellant described it in their appeal form and the Council in their decision notice.
3. Appendix F of the appellant's submissions includes an amended version of a layout plan (drawing no. RA237/14/6A) which shows a reduction in the number of off-street car parking spaces from 11 to 6 at the site. The Council have confirmed they have seen the revision and indicated that the reduction in parking spaces could be acceptable.
4. The Planning Inspectorate's guidance¹ provides advice on the circumstances whereby amendments proposed during the appeal process can be taken into account. Amongst its advice, the guidance states the appeal process should not be used to evolve a scheme. Furthermore, it is important that what is considered by the Inspector is essentially what the Local Planning Authority based its decision, and on which interested people's views were sought.
5. The guidance further advises that when considering whether or not the appeal scheme can be formally amended, consideration should be had to the Wheatcroft High Court judgement². This judgement established that one of the main criterion, when considering an amendment is whether the development is so changed, that to grant it would deprive those who should have been consulted on the changes the opportunity for further comment.
6. The parking provision depicted on the revised plan constitutes a significant alteration from the scheme which the Council determined, given that it could

¹ Procedural Guide: Planning appeals – England Updated 12 April 2022

² Wheatcroft (Bernard) Ltd v Secretary of State for the Environment and Harborough DC (1982)

potentially remove the third reason for refusal. Nevertheless, the plan has not been subject to a detailed, formal re-consultation. Given that other interested parties have raised concerns in respect to a lack of parking in the area and the off-street provision has been reduced, I consider that if I were to accept the amended plan, the interests of third parties would be prejudiced. Therefore, I have determined the appeal on the basis of the plans which accompanied the planning application.

Main Issues

7. The main issues are the effect of the proposal on i) character and appearance; ii) living conditions of adjoining properties with regard to noise and disturbance; iii) parking provision; and iv) flooding.

Reasons

Character and appearance

8. The appeal site is located at the end of a cul-de-sac in Wilfred Avenue in Romford on an irregular shaped plot. The surrounding area is residential with two storey semi-detached and terrace properties in a traditional style providing a uniform pattern of development. The property at the appeal site is a recent infill development³ comprising of a detached house with a modern brick appearance set back from the main frontage.
9. The appeal scheme seeks to address the previous dismissed scheme⁴ and the appellant has made changes to the design to mitigate against the reasons for refusing planning permission set out in the Councils decision notice and appeal decision. Specifically, the previous terrace of four units has now been split into two pairs of semi-detached dwellings, and the height has been reduced by approximately 0.9 metres (m). Nevertheless, the proposed scheme is still located in a similar position to the dismissed scheme at the rear of the site, which the previous Inspector found would not respond to the distinctive local building form and pattern of development.
10. The proposal would introduce four two-storey dwellings in an area currently occupied by modest single storey outbuildings, used for storage in connection with a local construction company. It is acknowledged the height of the proposed dwellings would be subservient in comparison to the existing properties on Wilfred Avenue. Nevertheless, the proposed dwellings would clearly appear as two storey units due to the gable ends and first floor dormer windows, in an area characterised by single storey domestic sized outbuildings. Furthermore, the proposed plot sizes are much smaller than the existing dwellings in Wilfred Avenue. Given the off-street parking and associated access required for the development, it would appear harmfully cramped relative to its more spacious setting and would provide a dominant appearance. Consequently, the proposed houses would notably compromise the attractive established urban grain in this area.
11. Policy 10 of the Havering Local Plan 2016-2031 adopted 2021 (HLP) takes a positive approach to backland and garden development. However, it also seeks to ensure adequate amenity space, which given the cramped nature of the proposed plot sizes is not provided here. Moreover, HLP Policy 26 is clear that

³ London Borough of Havering Planning Ref: P0324.03

⁴ PINS Ref: APP/B5480/W/18/3194273

the effect on character and appearance must also be appropriate, with developments required to respect, reinforce and compliment the area. Given my findings above, the development would conflict with this policy in this regard.

12. Consequently, the proposed development would, for the reasons above, not respect and compliment the distinctive qualities of the area. Given the increase in bulk, siting and scale, it would provide a cramped form of development at odds with its locality, and thus would harm the character and appearance of the surrounding area. Accordingly, it would be contrary to HLP Policies 10 and 26, which among other things require development to be of a high quality and to respect and enhance local character. The proposal would also conflict with paragraph 130(c) of the National Planning Policy Framework 2021 (the Framework) which advises that new development should be sympathetic to local character.

Living conditions of adjoining properties

13. Both parties agree that there would be no impacts on living conditions for neighbouring residents with regard to overlooking, loss of privacy or loss of light. I have no reason to disagree with that assessment. Where the parties differ is whether there would be an increase in noise and disturbance experienced at No 28 Wilfred Avenue as a result of the access route. Due a potential increase in the frequency of vehicular movements in close proximity to the living conditions of this property. The previous Inspector found the additional dwellings would have an unreasonable adverse effect on the living conditions of the occupants of No 28 in the garden and the habitable rooms. However, the Inspector had not been furnished with any details in respect to proposed measures that could suppress any potential increase in noise and disturbance.
14. As part of this appeal, the appellant has submitted details of acoustic fencing⁵ which could provide a reduction in noise up to approximately 32dB. However, there is no information before me in respect to any noise assessment or background noise levels currently existing at the site. The proposal has the potential for increased vehicles coming and going in close proximity to No 28 leading to a possible increased noise and disturbance. From the evidence supplied, it is unclear whether the sound attenuation measures proposed would be adequate, as there are no quantifiable calculations on existing noise levels. As such, it cannot be guaranteed that the proposed sound reduction measures would be sufficient to control the potential sound and disturbance resulting from the proposal.
15. Overall, I am not persuaded that the acoustic fencing specification can realistically achieve appropriate living conditions for the existing occupants at No 28, as it has not been adequately demonstrated that the impact of noise from the proposal could be appropriately mitigated. As such, the proposal would be contrary to HLP Policies 7 and 10, which among other things, seek to protect the living conditions of existing and new occupants from noise, vibration and disturbance.

Parking provision

⁵ Appendix E – RJS Planning Written Representations: Grounds of Appeal (dated April 2022).

16. Policy T6.1 of The London Plan, adopted March 2021 (LP) sets-out the applicable maximum parking provision by reference to the Transport for London Public Transport Accessibility Levels (PTAL). With the aim of encouraging greater use of non-car modes of transport in areas with higher PTAL. The appeal proposal would provide 11 parking spaces to serve the four houses. This would exceed the maximum parking standards for this type of dwelling in this location, as set out in LP Policy T6.1.
17. It is acknowledged that sufficient space may be available within the plot for the provision of 11 parking spaces, which could reduce the demand from prospective occupiers to park on-street. However, this overprovision of parking would undermine the purpose of the maximum parking standards, that being, to promote more sustainable modes of transport and reduce dependency upon private vehicles.
18. As a result, the development would be contrary to Policy T6.1 of the LP, and Policy 24 of the HLP, which amongst other things, seek to ensure that development adheres to parking standards and facilitates meeting strategic targets in respect of reducing car trips and utilising more sustainable modes of transport.

Flooding

19. The appeal site is located in Flood Zone 3 which is at a higher probability of flooding⁶. The proposal is for residential development, which is 'more vulnerable' to the effects of flooding⁷ and would require the submission of a site specific Flood Risk Assessment (FRA). The appellant has relied on a previously draft FRA⁸ used in connection with the refused and dismissed appeal. Any assessment needs to be based on existing flood zone classifications. Nevertheless, there is no evidence that flood relief works have been undertaken in the area to change the classification.
20. The proposal does not meet the criteria under Paragraph 168 of the Framework and is therefore not exempt from either of the sequential or exception tests. Paragraph 162 of the Framework is clear that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
21. The FRA provides evidence that there are no other reasonably available sites appropriate for the proposed development at a lower risk of flooding. However, there is little information in respect to the appropriate catchment area used for the development proposed. The area over which the sequential test is considered, is not fixed and it would be unacceptable to consider just land in control of, or owned by, the appellant. As such, without an assessment of potentially suitable and available alternative sites, I am not satisfied that there are no other sequentially preferable, suitable and available alternatives within an appropriate sequential test area.
22. As the development fails the sequential test there is no need to apply the exception test which, in part, seeks to ensure that the proposed development

⁶ Planning Practice Guidance, Paragraph: 078 Reference ID: 7-078-20220825

⁷ NPPF Annex 3: Flood risk vulnerability classification

⁸ Flood Risk Assessment for Planning prepared by UNDA dated September 2016 (Ref: 86621-Robinson-WilfredAve)

will remain safe over its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere.

23. Therefore, the appeal site is not a suitable location for the proposal, having regard to policies concerned with development in areas at risk of flooding. As such, in this respect it would be contrary to LP Policy SI 12, HLP Policy 32 and guidance in the Framework which among other things seek to ensure flood risk is minimised and mitigated, and that residual risk is addressed.

Other Matters

24. The Council have indicated that there is some uncertainty over the housing land supply at present and are currently seeking clarity from the Department for Levelling Up, Housing and Communities in respect of the recently adopted HLP and its stepped housing targets. The appellant concludes that this uncertainty indicates a failure in meeting housing need. Given this uncertainty, the presumption in favour of sustainable development as outlined in Paragraph 11 of the Framework should be engaged.
25. Paragraph 11 of the Framework states that where the policies that are most important for determining the application are out of date, 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, or specific policies in the Framework indicate development should be restricted.
26. As such, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits inherent in providing additional dwellings to assist the Council in meeting its housing targets. There would only be limited benefits in the provision of four new dwellings and given the harm that I have identified in respect of the character and appearance of the area, living conditions of existing residents, over provision of parking and flooding issues, I consider that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole, including its presumption in favour of sustainable development.
27. My attention is also drawn to another backland development approved by the Council⁹. I have had regard to this decision, however on the basis of the information I have about this case, the context would appear to be different. Furthermore, it is unclear how the character of this site relates to the street scene and living conditions of the surrounding properties. Nevertheless, each scheme needs to be considered on its own merits and circumstances.
28. Bringing together my conclusions on the main issues I have had regard to the public benefits of the appeal scheme, in that the proposal would provide additional dwellings. I am in no doubt as to the positive value of some of these matters and I recognise that the appeal proposal may well accord with various other development plan policies. However, neither the benefits of the scheme nor these other matters provide clear and convincing justification to outweigh the harm identified above in respect to the character and appearance of the area, the living conditions of existing residents, the over provision of parking

⁹ London Borough of Havering Planning Ref: P0400.14

and the lack of clarity associated with flooding issues to justify allowing the appeal.

Conclusion

29. The proposed development would conflict with the development plan when considered as a whole and there are no relevant material considerations that outweigh the identified harm and associated development plan conflict. For the reasons given above, I conclude that the appeal is dismissed.

Robert Naylor

INSPECTOR