



Appeal Decision

Site visit made on 30 November 2022

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2023

Appeal Ref: APP/U5930/W/22/3295744
109-113 High Street, London E17 7DB

- 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 Israel Gold, on behalf of Rosefield Ltd, against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 213820, dated 1 December 2021, was refused by notice dated 27 January 2022.
 - The development proposed is construction of additional storey to an existing building to provide four self-contained residential units comprised of 2 x 1 and 2 x 2 bedroom units (Use Class C3) including all associated works including the provision of cycle storage and refuse storage facilities.
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Decision

1. The appeal is allowed and planning permission is granted for construction of additional storey to an existing building to provide four self-contained residential units comprised of 2 x 1 and 2 x 2 bedroom units (Use Class C3) including all associated works including the provision of cycle storage and refuse storage facilities at 109-113 High Street, London E17 7DB in accordance with the terms of the application, Ref 213820, dated 1 December 2021, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. In the banner heading, I have referred to the description of the proposal as set out in the Council's decision notice and the appellant's appeal form, with a minor amendment to correct a typographical error. This describes the proposed development more precisely than that provided within the application form.
3. The appellant has provided an Overheating Risk Assessment (ORA) which I am satisfied does not change the development to such a degree that to consider it would deprive those who should have been consulted on the change the opportunity of such consultation. In this case, the Council has had an opportunity to comment on the ORA through the appeal process and so would not be prejudiced by my consideration of it. I have therefore determined the appeal taking into account the contents of the ORA.

Main Issues

4. During the appeal, an updated Strategic Access Management Measures (SAMM) Strategy and partnership agreement came into force, including measures to mitigate the effects of recreational pressure arising from new development on the Epping Forest Special Area of Conservation (SAC). While not a reason for

refusal cited by the Council, I have had due regard to this given the change in circumstances since the Council's decision. In view of this, the main issues are:

- The effect of the proposed development on the character and appearance of the area, including the setting of the Walthamstow St James Conservation Area (CA);
- Whether the proposal would provide satisfactory living conditions for its future occupiers, having regard to the provision of single aspect dwellings; and
- The effect of the proposed development on the SAC.

Reasons

Character and Appearance

5. The appeal site comprises a 3-storey flat roof building with ground floor commercial uses and residential units at first and second floor. The building features a chamfered corner at the junction of High Street and Mission Grove, and light-coloured brickwork to external elevations at first and second floor. Large windows face onto High Street and Mission Grove, and there are enclosed balconies with glazed balustrades at either end of these elevations.
6. On High Street, there is a mix of predominantly 2 and 3 storey buildings in a terraced arrangement, although there are examples of taller buildings locally, including several 4 storey buildings along High Street. Building ages and styles vary considerably. The buildings opposite and to the east of the appeal site are typically more contemporary. Adjoining the appeal site is a large 2-storey flat roof commercial building. Opposite is a 4-storey tiered building with residential uses to upper floors. Immediately adjacent to the site lies the boundary of the CA, with more traditional architecture.
7. The CA is an historically important commercial area containing examples of nineteenth and early twentieth century architecture. Near the appeal site, the CA comprises a mix of commercial uses, some with residential units above, and lively market stalls, that contribute to its bustling character. The Walthamstow St James Conservation Area Appraisal (April 2014) highlights a lack of strong character in buildings within the central stretch of High Street, in which the appeal site is located, accentuated by poor quality mid-twentieth century development, mostly outside of the Conservation Area. It also notes building ranges and styles are more variable on the southern side of the street. The significance of the CA therefore, in so far as it relates to this appeal, is derived from the vibrant mix of uses in the area and the quality and quantity of well-preserved historic buildings at the western end of High Street, particularly on its northern side.
8. The appeal proposal would add an additional storey to the existing building, of a similar style albeit finished in a dark brick. The proposed extension would be set back from the existing front and side elevations, providing roof terraces for the proposed units with a glazed balustrade, and reducing its presence when viewed from street level. Windows would be broadly aligned with those below.
9. The corner of the proposed extension would not be chamfered like the existing building. However, this divergence in the design between floors would mostly be perceptible in views looking north-east along High Street. In such views, the

- proposed setback would provide space between the new top floor and this chamfered edge. This would mitigate any harmful visual effect of this.
10. The use of darker materials to upper floors is not uncommon in the surrounding area. Notably, the contemporary high-rise flats on the opposite side of the railway line that sit within the setting of the appeal site feature darker top floors. I observed similar treatment to other buildings in the vicinity of the site. In any event, the final tone of the brick can be agreed via a planning condition.
 11. Overall, the proposal would be a sympathetic addition to the existing building, in keeping in scale and appearance, and would not appear unduly dominant or bulky. Given the variation in the built form of the surrounding area, the proposal would also not appear out of keeping with neighbouring buildings or the street scene.
 12. The existing building does not contribute significantly to the significance of the CA and I have found that the proposal would be in keeping with the prevailing character and appearance of the area. It would not unduly interrupt views of the CA or have a harmful effect on how it is experienced. Consequently, the proposal would have a neutral effect on the CA.
 13. I conclude that the proposal would not harm the character and appearance of the area, including the setting of the Walthamstow St James Conservation Area. It therefore accords with Policies CS12 and CS15 of the Waltham Forest Local Plan Core Strategy adopted March 2012 (the Core Strategy) and Policies DM28 and DM29 of the Development Management Policies Local Plan adopted October 2013 (the DMP). These policies seek, among other things, to protect heritage assets, including conservation areas, and ensure new development responds positively to local context and character, including in terms of scale, height and massing, and reinforces local distinctiveness. It is also in accordance with Chapter 16 of the National Planning Policy Framework (the Framework), in respect of its aims of ensuring the significance of a designated heritage asset is not harmed by development within its setting.

Living Conditions

14. The appeal proposal would provide 4 self-contained residential units. These would comprise two corner units with dual aspect outlooks and two single aspect units, one with an outlook to the north, and one with an outlook to the south.
15. Standard 29 of the Mayor of London Housing Supplementary Planning Guidance March 2016 (SPG) advises that developments should minimise the number of single aspect dwellings. Likewise, the Council's Urban Design Supplementary Planning Document (SPD) Adopted February 2010 indicates that when considering the arrangement of units within a residential development, north facing single aspect units should be avoided.
16. The SPG notes that single aspect dwellings are more difficult to ventilate naturally and more likely to overheat. However, it also recognises that good single aspect one and two bedroom homes are possible where limited numbers of rooms are required, the frontage is generous, the plan is shallow, the orientation and or outlook is favourable, and care is taken to mitigate the potential for overheating without the need for mechanical cooling.

17. The proposed north facing single aspect unit would feature one bedroom and an open plan living/kitchen area. The proposed south facing single aspect unit would feature two bedrooms and an open plan living/kitchen. Each of the bedrooms would have a separate window and be accessed via an internal hallway. The open plan living/kitchen areas of both units would feature glazed double doors and large windows opening out onto an external terrace.
18. The appellant's submitted ORA notes that the scheme could be ventilated naturally with various openable windows and no constraints identified in terms of acoustics, security or air pollution. It goes on to conclude that no mitigation would be required to meet the industry standard for assessing overheating risks in residential buildings. No specific concerns were raised by the Council in relation to overheating and natural ventilation, and these matters did not explicitly feature in the Council's reason for refusal. My own observations and the other evidence before me do not lead me to a different conclusion to the ORA.
19. Both units would otherwise be relatively shallow with each of the bedrooms and living spaces arranged along the external wall providing wide frontages. Each of the living spaces would also have a good outlook given their elevated position above the street and separation from neighbouring buildings. The layout of the units would be logical given the footprint of the existing building and floorplans below, and this arrangement would not prejudice any development on the adjacent site. I therefore consider that the development has, within reason, minimised the number of single aspect dwellings and those that are provided are generally of a good standard.
20. I therefore conclude that the proposal would provide satisfactory living conditions for its future occupiers, with particular regard to the provision of single aspect dwellings. It therefore accords with Policy CS15 of the Core Strategy and Policy DM29 of the DMP. These policies seek, among other things, to ensure new development incorporates high quality and inclusive design, to create an attractive, safe, healthy, accessible and sustainable environment.
21. Policy DM28 of the DMP and Policy CS12 of the Core Strategy concern the protection, conservation and enhancement of heritage assets and so I do not find any direct conflict with these policies in respect of this main issue.

Epping Forest Special Area of Conservation (SAC)

22. Waltham Forest shares a boundary with the SAC. I must therefore have regard to The Conservation of Habitats and Species Regulations 2017 (as amended). These regulations require that, where a project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives.
23. The entirety of the London Borough of Waltham Forest, and thus the appeal site, falls within the SAC's Zone of Influence (ZOI) for recreational pressure. Based on the evidence before me, the proposal would be likely to have a significant effect upon the SAC in combination with other plans or projects.
24. Epping Forest comprises wood-pasture with habitats of high nature conservation value including ancient semi-natural woodland, old grassland plains, wet and dry heathland and scattered wetland. The woodland represents

one of the largest continuous semi-natural blocks in the country, characterised by groves of over-mature pollards. The plains contain a variety of unimproved acid grasslands uncommon elsewhere in Essex and the London area. The Forest supports a nationally outstanding assemblage of invertebrates, major amphibian interest and an exceptional breeding bird community.

25. The SAC is designated for three Annex I habitats (Northern Atlantic wet heaths, European dry heaths, and Atlantic acidophilous beech forests), as well as one Annex II species (Stag Beetle). The conservation objectives of the SAC are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features and Species.
26. The proposal would increase the residential population in the ZOI. Epping Forest is a popular visitor destination, and it is therefore likely that future occupants of the proposed development would visit the SAC. There are several potential ways additional visitors could have an impact on the nature conservation of the site. These include through trampling, dog fouling, increased fire risk, damage to veteran trees, interactions with livestock, disturbance to invertebrates and other wildlife, and spread of disease and alien plants, among others. In this regard and considering the conservation objectives of the SAC, this would adversely affect its integrity.
27. At the time of the Council's decision an initial draft of costed SAMM had been prepared in the interests of mitigating the effects of recreational pressure on the SAC. This included a SAMM levy applicable to new residential developments of 10 units or more only. However, since the Council issued their decision, I have been advised that an updated SAMM Strategy and partnership agreement with other local authorities has been adopted. Consequently, from 1 January 2023 the Council is seeking a contribution of £627 per unit from all residential development.
28. The appellant has subsequently been given an opportunity to respond to this change in circumstances and has confirmed their agreement to the requisite SAMM contribution. An executed Unilateral Undertaking (UU) has been provided during the course of this appeal to secure this, and the Council has confirmed this meets their requirements.
29. Natural England, in their role as the Statutory Nature Conservation Body, has been consulted on the appeal and has confirmed they agree all new residential development in the Borough will have an in-combination impact on the SAC. They also confirm that, in line with the updated partnership agreement, it is their understanding SAMM contributions would be required for all residential development regardless of size from 1 January 2023.
30. Natural England has also advised that residential developments of all sizes should make contributions towards the Borough's Suitable Alternative Natural Greenspace (SANG) Strategy. The Council has confirmed an appropriate proportion of the Community Infrastructure Levy (CIL) payment made by this scheme will be invested in line with the SANG Strategy.
31. On the basis of the evidence before me, I am satisfied that the UU, in combination with the development's CIL contribution, is sufficient to enable the delivery of proportionate and relevant mitigation pursuant to the Council's strategy for development which could affect the SAC. I therefore find that, with

the provided mitigation, the proposal would not have an adverse effect on the integrity of the SAC.

Other Matters

32. In addition to the above, the UU includes an obligation to secure a car free development by restricting future occupiers from having a Residents Parking Permit, and ensuring future occupiers are made aware of this. The site is within a Controlled Parking Zone (CPZ). Policy CS7 of the Core Strategy seeks to promote sustainable travel and car free developments. Policy DM16 of the Local Plan encourages car-free development in locations that are highly accessible by public transport; are accessible to opportunities and services, and/or have high levels of parking stress. The appeal site is in a location where these policies would promote or encourage car free development and the obligation set out in the UU is relevant, proportionate and necessary to achieve these aims.
33. Furthermore, the UU sets out an obligation to secure local highway improvement works and repairs by virtue of a Condition Survey and Section 278 Agreement, pursuant to the advice of the local highway authority. I am satisfied this obligation is necessary, relevant and proportionate.

Conditions

34. The Council has suggested conditions should the appeal be successful. I have considered these and amended where necessary to accord with the national Planning Practice Guidance and the tests for conditions set out in Paragraph 56 of the Framework.
35. In addition to the standard time limit condition, I have attached a condition to specify the approved plans as this provides certainty. A condition to secure and agree details / samples of the proposed materials is attached to safeguard the character and appearance of the area. A condition covering construction logistics is required in the interests of highway and pedestrian safety, and the living conditions of neighbouring residents.
36. A condition to secure and agree details of measures to reduce water use is required in accordance with Policy SI5 of the London Plan and in the interests of water conservation. A condition to secure and agree details of energy efficiency measures to minimise carbon dioxide emissions is required in line with Policy SI2 of the London Plan, Policy CS4 of the Core Strategy and Policy DM10 of the DMP.
37. A condition concerning the emissions of any non-road mobile machinery (NRMM) to be used on site is required in the interests of air quality and to accord with The Control of Dust and Emissions During Construction and Demolition Supplementary Planning Guidance July 2014 and Policy SI2 of the London Plan.
38. The Council suggested a condition requiring the developer to enter into a formal agreement to restrict future occupiers from obtaining parking permits in any controlled parking zone affecting the site or any zone adjacent. However, this matter is addressed in the UU and so this condition is not necessary.

Conclusion

39. The proposed development would adhere to the development plan as a whole and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal succeeds.

Ryan Cowley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - No. 0039-DR-0010 P01 Site Location Plan
 - No. 0039-DR-0011 P01 Site Block Plan
 - No. 0039-DR-0100 P01 Proposed Ground Floor
 - No. 0039-DR-0013 P01 Existing First Floor
 - No. 0039-DR-0102 P01 Proposed Second Floor
 - No. 0039-DR-0103 P01 Proposed Third Floor
 - No. 0039-DR-0104 P01 Roof Plan
 - No. 0039-DR-0200 P01 Proposed South East & South West Elevations
 - No. 0039-DR-0201 P01 Proposed North West Elevation/Section
- 3) No development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 4) No development shall commence until a Construction Logistics Plan has been submitted to, and approved in writing by, the local planning authority. The Construction Logistics Plan shall provide for:
 - a. hours of delivery and site operation times;
 - b. temporary traffic arrangements or restrictions;
 - c. journey planning and access routes (taking into consideration existing road layout);
 - d. details of site access arrangements including swept path analysis for any haulage vehicles accessing or egressing;
 - e. loading, unloading and material storage locations;

The approved Construction Logistics Plan shall be adhered to throughout the construction period for the development.

- 5) No development shall commence until a scheme detailing measures to reduce water use within the development, to meet a target water use of 105 litres or less per person, per day, has been submitted to, and approved in writing by, the local planning authority. The development shall be constructed in accordance with the approved scheme and thereafter retained as such for the lifetime of the development.
- 6) Prior to the occupation of any part of the development hereby permitted, a report demonstrating how the scheme reduces the carbon dioxide emissions of the development by at least 35% compared to the 2013 Building Regulations shall be submitted to, and approved in writing by, the local planning authority. The report shall explain what measures have been implemented in the construction of the development. The energy efficiency measures documented and approved shall be retained for the lifetime of the development.
- 7) No non-road mobile machinery (NRMM) shall be used on the site unless it is compliant with the NRMM Low Emission Zone requirements (or any superseding requirements) and until it has been registered for use on the site on the NRMM register (or any superseding register).