



Appeal Decision

Site visit made on 7 March 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 April 2023

Appeal Ref: APP/U5930/W/22/3298069

131A Greenway Avenue, Walthamstow E17 3QL

- 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 Somani against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 204016 dated 22 December 2020 was refused by notice dated 29 March 2022.
 - The development proposed is the demolition of the part constructed house and replacement with a multi-unit apartment building.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Somani against the Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are the effect of the development on: highway safety with regard to providing a safe and suitable access and the arrangements for the collection of waste; and the living conditions of residents of Nos. 123-131 Greenway Avenue with regard to privacy.

Reasons

Highway Safety

4. The appeal site comprises a partially constructed 4 bedroom dwelling, located on land to the rear of Greenway Avenue. It is accessed via a single carriageway road located between 131 and 133 Greenway Avenue, which serves the rear of the properties on this side of the street, providing access to garages. This road is also one of three accesses along Greenway Avenue to the community garden. At present it is of uneven surfacing and lined with vegetation, with no lighting.
5. The proposal seeks permission for the erection of a part three storey, part two storey building to create five self-contained flats. It is stated that this would be car-free, and the appellant has confirmed a willingness to enter into a s106 agreement to ensure no onsite parking, albeit that no such agreement is before me. Nevertheless, with a total of 12 bedrooms across 5 separate households, the proposal would result in significant pedestrian movement along the access road throughout the day and night. Although planning permission was previously granted at the site to increase a 2 bedroom dwelling to a 4 bedroom dwelling, by

comparison the proposal has the potential for a much more significant increase in occupancy and, accordingly, pedestrian use of the access road.

6. The appellant contends this road experiences minimal traffic and has had no accidents in the last 5 years but no substantive evidence has been provided in this regard. Despite its uneven surface, I observed the road to serve many rear garages such that the potential remains for it to be well-used by numerous vehicles. As such, occupiers of the site would share the access from Greenway Avenue to the proposal with these vehicle users. Even acknowledging the likely low vehicle speeds, due to the road's narrow nature and poor intervisibility beyond the bend on the approach to the site, pedestrian activity of the level likely to be associated with the proposal would greatly increase the potential for collision risk such that a safe access to the site would not be provided. While, in general, spaces adjacent to gardens can be used as vehicle and pedestrian areas, the precise nature of this road is such that there would be severe implications for its safe operation.
7. Improvements are proposed to this section of the access road such as hardstanding, lighting and delineation of a pedestrian area. However, notwithstanding the concerns regarding the deliverability of these, the narrow nature and poor intervisibility of the road would remain. In addition, such improvements could further encourage use of the entire road by vehicles. As such, the pedestrian activity introduced by the proposal would still lead to conflict with vehicle users in this location, in addition to the potential for collision risk, to the detriment of highway safety.
8. At present the road has the potential to be well-used by pedestrians for access to the community garden. However, such trips are likely to be confined to the daytime and would be shared with other such accesses along Greenway Avenue. Due to its nature, movement associated with the proposal would be concentrated to the site access road and could occur at day and night throughout the year, increasing the usage of this immediate section of the highway and, consequently, the potential for conflict between pedestrians and vehicles at this section.
9. Submitted plans show that the proposal would provide refuse storage area for 2x 1,100 lite bins at the site, one for recycling and one for refuse, which would be moved to Greenway Avenue for collection by a commercial management company. However, this would result in the bins being stored, albeit temporarily, on the public highway. This would cause an unacceptable obstruction to pedestrians, wheelchair users, cyclists and other highway users given the narrow nature of the footpath, which is partially used for parking bays. While the Council did not raise this in connection with the increase in occupancy from a 2 bedroom to a 4 bedroom dwelling, it remains that the proposal would, due to its scale, generate significantly more waste and result in sizeable bins being placed on the highway as a result.
10. For the reasons given, the proposal would have a significant adverse effect on highway safety by failing to provide a safe access to the proposal or adequate arrangements for the collection of waste. It would fail to comply with Policies DM29 and DM32 of the London Borough of Waltham Forest Development Management Policies Local Plan, October 2013 (the DMP) insofar as it seeks to ensure development is designed to provide safe connections with surrounding streets and that provision is made for collection of refuse, having regard to the location of the provision and its impact on the amenities of surrounding occupiers. While reference is also made to Policy CS13, CS15 of the Waltham Forest Local Plan Core Strategy,

March 2012 (the CS), and DM30 of the DMP, these relate to design, health and well-being and living conditions.

Living conditions

11. The proposal would be sited behind the dwellings of Nos. 123 – 131 Greenway Avenue, set back from the long rear gardens of those properties by the intervening road providing access to the rear garages. It is agreed between the main parties that there is adequate separation distance to ensure no undue overlooking in respect of the rear habitable room windows on Greenway Avenue. Based on my observations, I have no reason to disagree.
12. However, the proposal would incorporate habitable room windows at second and third floor levels at distances of around 3.5m and 11m from the boundary, respectively. Planting and garages are present along the boundary but, due to the long nature of the Greenway Avenue gardens, the proposal would offer clear and direct views of much of these rear spaces from the facing second and third floor windows. In addition, such views would be possible from the proposed facing upper terrace area which, due to its nature and positioning, would also create an undue perception of overlooking for the residents of Nos. 123 – 131 Greenway Avenue. Taken together, this would result in a negative impact on the privacy of the occupiers of these dwellings, reducing their enjoyment of the back garden areas.
13. My findings are supported by the provisions of the Waltham Forest Urban Design Supplementary Planning Document, February 2012 (the UDSPD) which, although guidance rather than policy, remains a material consideration. It states that independently of the minimum separation distances between buildings, new developments with habitable rooms overlooking existing private gardens will generally need to be set back 5m per storey from the common boundary. This would be a setback of 10m and 15m from the common boundary for second and third floor windows, respectively, that the proposal would not meet.
14. I note that the appellant has referred to other properties within the wider borough where the provisions of the UDSPD have been disregarded and smaller separation distance between properties has been permitted. However, each scheme is decided on its own site specific circumstances and, based on my observations on site, the proposal would result in adverse impacts on the living conditions of surrounding residents due to the positioning of the habitable room windows and upper terrace relative to the long, rear gardens along Greenway Avenue.
15. For the reasons given, the proposal would have a significant adverse effect on the living conditions of residents of Nos. 123-131 Greenway Avenue with regard to privacy. It would fail to comply with Policy DM32 of the DMP and the UDSPD insofar as they seek to ensure privacy is maintained for neighbours in their homes and gardens. While reference is also made to Policy DM29 of the DMP and Policy CS15 of the CS, these relate to design.

Other Matters

16. Although the Council has raised concerns about the potential for collision risk between pedestrians and HGVs during construction, I note from the Outline Construction Management Plan that the proposal is anticipated to generate up to 2 construction deliveries per day, during specified hours and with smaller vehicles. A Detailed Construction Management Plan would also be agreed prior to the

commencement of development. On this basis, I am satisfied that there would be no undue risk to highway safety from this aspect of the proposal.

17. While the Council has also raised concerns regarding anti-social behaviour along the proposed access road due to its lack of overlooking and the potential for users to feel unsafe in this regard, no substantive evidence of such behaviour or crime in the area has been submitted such that I attach limited weight to this issue.

18. Comments were received on matters not covered by the above main issues. This includes the potential for the proposal to have undue impact with regard to noise, ecology and drainage. I note that the Council did not include these matters as reasons for refusal subject to suitable conditions requiring a Detailed Construction Logistics Plan, Construction Exclusion Management Plan and Drainage Strategy in the event that planning permission were granted. I further note that the Council did not consider the proposal to represent overdevelopment of the site from a design perspective. Based on the submitted information and my observations on site, I have no reason to disagree.

19. I also note comments received on land ownership. However, such issues have no material bearing on my assessment of the planning issues of the scheme.

Conclusion

20. The proposal would conflict with the development plan. There are no other considerations, including the provisions of the Framework, which indicate that a decision should be taken other than in accordance with the development plan. For this reason, the appeal is dismissed.

C Rafferty

INSPECTOR