



Appeal Decision

Site visit made on 21 February 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Appeal Ref: APP/U5930/W/22/3304689

17 The Avenue, London E4 9LB

- 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 Ms Kay Sivananthan (Goodcare Ltd) against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 213415, dated 25 October 2021, was refused by notice dated 28 June 2022.
 - The development proposed is the demolition of existing buildings and redevelopment to provide a three-storey building (with rooms in the roofspace and lower ground level) comprising 15 self-contained flats with associated amenity space, cycle parking, car-parking and other works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has provided updated plans with the appeal. As part of the appeal the Council has had the opportunity to comment on these. I am satisfied that the updates represent minor adjustments to the scheme and find that parties would not be prejudiced if I took these into account. I have proceeded on this basis.
3. I have received a planning obligation which attempts to deal with reasons for refusal relating to affordable housing, carbon saving, and various contributions. I will deal with these matters later within this decision.

Main Issues

4. The main issues are: (i) the effect of the development on the character and appearance of the area; (ii) the effect of the development on the living conditions of future occupiers with regard to light, outlook, privacy and standard of external amenity space; (iii) whether the development would result in the unacceptable loss of family dwellings; (iv) whether the development would result in the unacceptable loss of a HMO; and (v) the effect of the development on the living conditions of neighbouring occupiers with regard to outlook.

Reasons

Character and Appearance

5. The site comprises the terrace at Nos. 17-23 The Avenue. An extension connects Nos. 19 and 21 to create a 14 bedroom HMO flanked either side by a residential property. The site forms part of a group of dwellings of a consistent

design with a coherent, staggered building line. While it fails to reflect the prevalent semi-detached form of the area, its connecting extension is set back from the front building line and bay projections as a discrete addition in the wider street, imperceptible from certain viewpoints.

6. As a large, singular building with central entrance the proposal would also be distinct from the semi-detached dwellings. However, it would have a comparable height and footprint to the current terrace, with materials matching the surrounds and front bays to reflect a key design feature of the street. Landscaping would be provided to the front and, while hardstanding would be present, this is the case for many properties on The Avenue. The proposal would disrupt the staggered building line of Nos. 17-23. However, constructed largely in line with Nos. 17-19, it would sit behind No. 15 to the and in front of No. 25. As such, the wider pattern and placement of development along a staggered building line would be retained.
7. Notwithstanding the above, and the support from the Highams Park Planning Group, the proposal would incorporate elements that would be out of place in the vicinity. The crown roof would fail to reflect the uniformity of roof forms along this section of The Avenue, reading as out of place. Combined with the incongruous side dormers and prevalence of large rooflights, this level of the proposal would read as a busy and dominant addition to the street.
8. A central front balcony is also proposed at first floor level. It would be an out of place feature in the immediate streetscape, representing another incongruous element introduced by the proposal. Its presence would draw attention to the middle section of the building, highlighting the different scale and form of the property to surrounding semi-detached dwellings in a more noticeable and prominent manner than the current connection extension.
9. At present the rear of the site comprises a variety of extensions and alterations, which the proposal would replace with a more coherent arrangement of built form and communal garden space. However, it would incorporate numerous rear balconies that would appear out of place. Despite its increased setback from the railway line when compared with the current situation, and even acknowledging the current rear form of the building, the rear elevation of the proposal would remain visible from the nearby railway, where the condensed placement of numerous balconies in an immediate area where such features are not characteristic would appear visually jarring.
10. For the reasons given overall the proposal would have an adverse effect on the character and appearance of the surrounding area. As such, it would fail to comply with Policy D4 of the London Plan 2021 (the London Plan) Policies CS2 and CS15 of the Waltham Forest Local Plan Core Strategy, March 2012 (the CS), Policy DM29 of the London Borough of Waltham Forest Development Management Policies Local Plan, October 2013 (the DMP), the Waltham Forest Urban Design Supplementary Planning Document (the UDSPD) and Policy CDP2 of the Highams Park Neighbourhood Plan (the HPNP), May 2020 insofar as they seek to ensure good design that responds to and complements the surrounding area, local context, and character.

Living Conditions – Future Occupiers

11. The main parties agree that the level of private amenity space provided for each unit is adequate. While the amenity space for Flats 1 and 6 would be

wholly in the form of a subterranean courtyard, it would provide adequate privacy and occupiers would also have access to the large communal rear garden as a more open area to also make use of.

12. The amenity space for Flats 3 and 4 would be split between a lower courtyard and ground floor garden. I do not consider the staircase linking the spaces would make them inaccessible or unsafe. However, they would be heavily overlooked by the terraces and balconies of above units. This would limit the privacy of the split-level gardens such that, despite their size, they would be a poor standard of private, external space for dwellings of this nature.
13. While all units would be dual aspect, certain bedrooms would be served by a single side window, some of which would be of opaque glass with limited opening, while others would look directly onto boundary treatments. As such, while these windows would provide adequate privacy, these rooms would feel unduly enclosed. In addition, the only outlook from the lower ground floor bedrooms of Flats 1 and 6 would be towards the walls of the subterranean courtyards which, given the limited depth of this space, would appear overbearing. Even acknowledging the use of these spaces as bedrooms, the proposal would not provide adequate outlook from these habitable rooms.
14. The Daylight and Sunlight Report concludes the units as a whole would have good levels of light in line with relevant guidelines. In the absence of technical guidance to the contrary I attach considerable weight to this. While the Council has queried if the report takes account of trees, courtyard balustrades and parked cars, due to the generally large size of the windows and the setback of front windows at street level from The Avenue, such features would not unduly impact light levels experienced by occupiers. Similarly, while units to the front would have habitable rooms facing the street and to the rear would face the communal gardens, their setback from these spaces would retain the privacy of occupiers with regard to the internal floorspace provided.
15. The Council has queried the effect of the proposal on future occupiers with regard to noise. However, had the proposal been acceptable in all other aspects, this could have been addressed by an appropriately worded condition relating to insulation. While the proposal would meet the internal space requirements of the London Plan and the national space standards, there would be a shortfall at certain units required by DM7 of the DMP. However, the shortfall in all cases is minimal such that this alone would not result in the units providing substandard accommodation.
16. For the reasons given, while I have found that the proposal would be acceptable in terms of light, noise, internal floorspace and privacy of internal accommodation, it would have an adverse effect on the living conditions of future occupiers with regard to outlook, and the privacy and standard of external amenity space. As such, it would fail to comply with Policy D6 of the London Plan, Policy CS15 of the CS and Policy DM32 of the DMP and the UDSPD insofar as they seek to ensure development is functional and achieves indoor and outdoor environments that are comfortable and inviting, including the provision of adequate outlook and privacy in homes and gardens.

Loss of Family Dwellings

17. Policy CS2 of the CS seeks to maintain the number of quality homes, with the Council prioritising larger homes of three bedrooms or more and resisting the

loss of existing larger homes. In addition, Policy DM5 of the DMP states that the Council will seek all housing development to provide a range of dwelling sizes, focusing on the provision of larger family sized homes of three bedrooms or more in line with the preferred housing mix.

18. The proposal would result in the loss of two existing larger homes at the site, being No. 17, a four bedroom dwelling, and No. 23, a three bedroom dwelling, contrary to the provisions of Policy CS2. However, in principle, it would provide Flats 1, 3, 4 and 6 with three bedrooms each. As such, despite the loss of the existing properties there would be a net increase in family floorspace and larger, family dwellings at the site for which there is an identified need. This would be in addition to the provision of smaller residential units, thereby creating a range of dwellings largely in line with the preferred housing mix, optimising housing density on previously developed land and providing opportunities to meet other housing needs such as downsizing, which in turn could lead to further available housing.
19. Nevertheless, Flats 1, 3, 4 and 6, while suitably sized for family occupation, would not represent quality homes for reasons related to the outlook and amenity space. I am mindful that Policy HDA1 of the HPNP supports provision of family housing outside of the Highams Park District Centre, being three and four bedroom houses with gardens suitable for families. Given my findings above regarding the inadequate private amenity space to be provided at Flats 3 and 4, the proposal would not fully comply with this element of Policy HDA1.
20. As such, notwithstanding the floorspace and bedrooms proposed in these flats, they would not represent a benefit of the scheme that, even when taken together with the provision of additional units of accommodation on site, would outweigh the loss of existing, suitable, larger family homes in the area. While I note the appellant's assertion that, due to its floorspace, No. 17 The Avenue could potentially be converted to two smaller dwellings thereby resulting in the loss of a family dwelling, rather than the proposed net gain of two family sized dwellings, there is no more than a theoretical possibility before me that this would take place, such that I attach little weight to this.
21. For the reasons given, the proposal would result in the unacceptable loss of family dwellings. As such, it would fail to comply with Policy CS2 of the CS, Policy DM5 of the DMP and Policy HDA1 of the HPNP insofar as they seek to ensure the provision of suitable, larger family homes. While the Council has referred to Policy DM6 of the DMP and Policy H9 of the London Plan, these relate to conversion of properties and vacant homes, short stay rentals and HMOs, respectively, which are not applicable to this main issue.

Loss of HMO

22. Policy H9 of the London Plan seeks to ensure that HMOs of a reasonable standard are generally protected, acknowledging them as an important part of London's housing offer. However, the wording Policy H9 does not represent an absolute restriction on the redevelopment of HMOs. In addition, Policy CS2 of the CS gives clear support to the re-establishment of HMOs into single sized family houses in order to ensure a balanced housing mix in the area.
23. The proposal would provide four properties with 3 bedrooms each in place of the current HMO. While the Council has argued no evidence of an over-provision of large HMOs, this is not a requirement of Policy CS2. In any event,

the appellant has submitted information showing that an ample supply of HMOs would remain in the area. In principle, the development of a housing mix such as that proposed would equate to the re-establishment of a HMO in a way that would ensure a balanced housing mix.

24. However, in this case I have identified that Flats 1, 3, 4 and 6 would not be suitable family homes for reasons related to the outlook and amenity space. As such, they would not ensure a suitable stock and range of housing suitable for family occupation. Even acknowledging comments regarding the condition of the HMO and the findings of the previous Inspector that not all rooms within it meet the minimum size requirements¹, the proposal, due to the specific layout and nature of accommodation provided, would not represent a benefit that would outweigh the loss of the existing HMO at the site.
25. For the reasons given, the proposal would result in the unacceptable loss of a HMO. As such, it would fail to comply with Policy H9 of the London Plan and Policy CS2 of the CS insofar as they seek to ensure a balanced housing stock.

Living Conditions – Neighbouring Occupiers

26. The proposal would result in a greater depth of built form within 1 metre of the boundary with No. 25, close to ground floor habitable room windows at the neighbouring property, the position of which I saw on my visit.
27. While one of these windows on the side elevation would look directly towards the site, the current outlook from this position largely consists of boundary fencing and built form behind. As such, although the proposal would reduce the separation distance between the properties at this location, due to the current boundary treatment, it would not result in a significant change in outlook from this window so as to appear oppressive or overbearing.
28. A further habitable room window is present on No. 25, adjacent to the outrigger of that dwelling and positioned close to the boundary with No. 23. While the proposal would create a change in outlook from this window when looking towards the site, the main outlook towards the rear garden of No. 25 would be unchanged. In addition, rear projecting elements of the proposal would be further stepped back from the boundary with No 25 than the current property. The proposal would not therefore have a significant negative impact on the outlook from this location. While a first floor window is also present on No. 25, close to the boundary with No. 23, this is obscured glazed such that there would be no change to the outlook as a result of the proposal.
29. For the reasons given, the proposal would not result in harm to the living conditions of neighbouring occupiers. As such, it would comply with Policy D6 of the London Plan, Policy CS15 of the CS, Policy DM32 of the DMP and the UDSPD insofar as they seek to ensure adequate living conditions.

Other Matters

30. The Council has included reasons for refusal relating to: the lack of affordable housing; sustainability; and the absence of a planning obligation in respect of various contributions. An executed Unilateral Undertaking (UU) was provided with the appeal, which, amongst other things, included a shortfall contribution in respect of carbon off-setting and a late-stage viability review for affordable

¹ APP/U5930/W/18/3207945

housing. A viability report and energy and sustainability statement were also submitted.

31. As part of the appeal the Council had the opportunity to comment on the obligation and statements and, among other things, requested that the viability assessment be independently scrutinised. However, as I am dismissing for other reasons, I do not consider it necessary to review these issues in further detail. In any event, even if I were to find the proposal acceptable with regard to affordable housing provision, sustainability, and the other contributions in the UU, this would not outweigh the harm identified in respect of the other issues above.
32. The appellant has highlighted other examples of development that it considers comparable to the proposal, stating that these demonstrate the acceptability of intensified residential use at similar sites in the area. However, I have found above that the precise design and units provided by the proposal are harmful to the immediate character and living conditions of future occupiers. Each proposal is decided on its own site-specific merits and reference to development elsewhere carries little weight.
33. The proposal would, in principle, optimise the potential of the site with a mix of housing units, representing high density development on previously developed land. However, given my findings above, in this case this would not outweigh the identified harm of the proposal.

Planning Balance and Conclusion

34. The proposal would not harm the living conditions of neighbouring occupiers with regard to outlook or the living conditions of future occupiers with regard to noise, light, privacy of internal living space and internal floorspace provision. This lack of harm is neutral in the planning balance.
35. However, the proposal would result in harm to the character and appearance of the area and the living conditions of future occupiers with regard to outlook and the privacy and standard of external space. It would also result in the unacceptable loss of family dwellings and a HMO. Taken together, this harm is not outweighed by identified benefits, even if I were to find that that proposal was also acceptable with regard to sustainability, affordable housing provision and the provision of various contributions through the executed UU.
36. As such, the proposal would not accord with the development plan when taken as a whole. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. The appeal should therefore be dismissed.

C Rafferty

INSPECTOR