



Appeal Decision

Site visit made on 9 June 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th June 2023

Appeal Ref: APP/U5930/W/22/3311375

694 High Road, Leytonstone E11 3AA

- 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 A Malde (Zoo Property Holdings Limited) against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 213834, dated 3 December 2021, was refused by notice dated 21 July 2022.
 - The development proposed is construction of roof extension to create additional two floors to provide 4 self-contained residential units comprised of (4 x 2-bedrooms) (Use Class C3).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr A Malde (Zoo Property Holdings Limited) against the Council of the London Borough of Waltham Forest. This is the subject of a separate decision.

Preliminary Matters

3. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered from that on the planning application form. The description on the application form states that 5 apartments are proposed whereas 4 residential units are stated on both the appeal form and the Council's decision. The proposed plans before me show 4 units. Accordingly, in the description in the banner heading above, I have taken the wording from the appeal form and the Council's decision.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the character and appearance of the area and the setting of the Grade II listed properties 694A, 696A and 698A High Road;
 - Whether appropriate living conditions would be provided for future occupiers with particular regard to their access to outdoor amenity space; and
 - Whether or not planning obligations are necessary to make the development acceptable and, if so, whether or not any necessary agreements have been entered into.

Reasons

Character and appearance and the listed buildings

5. No 694 High Road is a traditionally designed property with accommodation across two floors. The appeal site is within an area of mixed character where there are many commercial properties but also residential properties. The immediate surrounds to the site exhibit a dense built form. There is variation to the design and scale of buildings on High Road but many are traditionally designed and 3 storeys in height. Brick, stone and render building materials are all well represented.
6. Adjacent to the appeal site is a short row of terraced properties containing the Grade II listed properties 694A, 696A and 698A High Road. Containing more floors of accommodation than the host property and incorporating pitched roofs, the terraced properties are taller than the host property. The listed terraced properties exhibit some distinguishing and traditional design features such as porticos, sash windows and stucco bands and dressings together with distinctively shaped pitched roofs. These distinguishing and traditional design features contribute to their significance. In the past Nos 694A, 696A and 698A were served by more expansive front and rear gardens and thereby would have had a spaciousness to their surrounds. As the surrounding area has become more built-up, over the passage of time, the listed properties have become more concealed than they once were. The distances at which the listed properties can now be appreciated will, I accept, be diminished in comparison to the past. Nevertheless, where views of the listed properties remain, and given in these views their appearance can be appreciated, I find that the visual setting of these properties contributes meaningfully to their significance.
7. In the proposed development, the height of the host property would increase substantially. In views from Kirkdale Road and, around its meeting point with High Road, this added height would conceal views of the distinctive roofscape of the listed terrace. Therefore, in these views, the extent to which the listed terrace would be noticeable and, the appearance of its uppermost sections appreciated, would be eroded. In such views and largely due to the presence of the host property to their front, I accept that a view of the entirety of the terrace is not available at present and also that not all of the terrace would be obscured in the proposal. I also acknowledge that the dormer windows, which account for a part of the roofscape of the terrace are not an original feature. Nevertheless, and in such views, the proposal would further conceal and reduce the legibility of the listed properties.
8. The design of the proposal would incorporate stepped changes in height with the higher sections set away from the listed properties. Given this, and the built-up nature of the surrounds to the listed properties, I acknowledge that in other views such concealment would not take place such as from Aylmer Road.
9. However, as the proposed development would in some views detract from how readily the listed properties can be appreciated, a harmful effect upon their setting would result. The appellant submits that the proposal would enhance the significance of the listed terrace by the creation of a clear separation from the commercial High Road and strengthening of the prevailing residential use of the listed terrace. I acknowledge that a greater concentration of residential properties would result from the proposal and its design would step up and away from the frontage of the terrace. However, I find that any positive effects

derived from this to be very limited and would not offset the harmful effects of concealing the terrace further in some views.

10. The proposal would, therefore, fail to preserve the setting of the listed properties. The harm to the significance of the designated heritage asset would be, in the words of the National Planning Policy Framework (the Framework), less than substantial.
11. Although I have found that the harm would be less than substantial, such harm is, nevertheless, a matter of considerable importance and weight in my determination. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty upon me to pay special regard to the desirability of preserving the listed terrace or its setting or any features of special architectural or historic interest which it possesses. Furthermore, and despite it being put to me that the listed properties are of limited significance and the subject of some unsympathetic alterations in the past, the Framework sets out that great weight should be given to the conservation of designated heritage assets.
12. Opposite the site on both High Road and Aylmer Road are 3 storey properties. Therefore, although in the proposal No 694 would increase in height substantially, it would remain comparable with some of the neighbouring properties and, more widely, many others in this area. The 2 storey extension proposed would be set back from the front elevation of the existing property and its distinctive first floor balustrade. The proposed extension would incorporate features such as detailing around the windows which would be very reflective of the existing property together with the use of matching materials.
13. To one side of the host property there are further properties which are not 3 storey and, despite the number of 3 storey properties in the area, this forms a group of lower properties in this particular part of the High Street. Given this and, given that the host property's relatively low height permits the views of the listed buildings to its rear, I do not find that, as has been put to me, its present scale detracts from the character or appearance of the area nor that the quality of the townscape as a whole would be improved by heightening the building.
14. Even so, given my findings above, the proposed development would be of a design, form and height that would be in keeping with the character and appearance of the area in general terms. Nevertheless, for the above reasons, there would be less than substantial harm to the listed terrace.
15. In coming to this view, I acknowledge that Council Officers recommended approval of the proposed development. I also note that the proposed development has evolved over time, being the subject of pre-application engagement. It may be that, as a result of that process, a number of design improvements to it may have been made. Nevertheless, for the above reasons the current iteration would still result in harm.
16. Consequently, the proposal would be contrary to Policies CS2, CS12 and CS15 of the Waltham Forest Local Plan Core Strategy, March 2012 (CS) and, policies DM28 and DM29 of the Development Management Policies Local Plan, October 2013 (DMPLP). In summary, and amongst other matters, these policies promote the conservation and enhancement of heritage assets and their setting, require high quality design which responds to local context including its

historic significance and, seek development which makes a positive contribution to improving the urban environment.

17. The Council's first reason for refusal also cites Policy CS13 of the CS. I do not find conflict with this policy which seeks to promote health and well-being and, as a result, is largely irrelevant to the specific harm I have identified. Furthermore, the Council cite conflict with paragraphs 194 and 195 of the Framework. These particular paragraphs place requirements upon developers and local planning authorities to identify and assess the effects of proposed development upon heritage assets. Sufficient information has been submitted to enable this to be adequately undertaken and, therefore, I find no conflict with these paragraphs. Later in my decision I return to the Framework and its advice upon conserving and enhancing the historic environment.

Living conditions

18. While Policy D6 of the London Plan, March 2021 (LP) sets out minimum standards for private outdoor space, Policy DM7 of the DMPLP sets higher standards, and the LP indicates local standards should take precedence. Although Policy DM7 seeks to ensure that all homes, including flatted development, have access to an element of outdoor amenity space the justification to the policy sets out that a flexible approach will be taken having regard to the circumstances of the case.
19. Public open spaces are located a short distance from the appeal site. This includes Henry Reynolds Gardens which contains a range of equipment and facilities whilst further large expanses of parkland are located on neighbouring land. These would be readily accessible from the appeal site and would provide the future occupiers with an alternative to a private outdoor amenity space.
20. Together with alternative outdoor space options, and amongst other matters, the justification to Policy DM7, states that access to shops, public transport, public services and community facilities and, the constraints of the site are further factors to be considered when determining outdoor amenity space requirements.
21. Being situated on High Road, the likes of cafés, public houses and shops would all also be readily accessible to the future occupiers of the flats and thereby provide alternative forms of leisure within easy reach. Furthermore, given the proximity of Leytonstone Station and the bus stops on High Road itself, future occupiers of the development would be well served by public transport options enabling them a means to travel to further services and facilities.
22. The appeal site is also located within an area with a dense built form and where there already exist buildings which are not served by very spacious plots. Therefore, that in the proposal upper storey accommodation would be provided without dedicated outdoor space would not be at odds with the character of the area.
23. For these reasons appropriate living conditions would be provided for future occupiers of the proposed development with particular regard to their access to outdoor amenity space. In coming to this view, I acknowledge that the COVID-19 pandemic did place emphasis upon the availability of outdoor space. However, given my above findings and in particular the availability of public

open spaces in the area, I nevertheless find the proposals acceptable in this regard.

24. As such the development would accord with Policies DM7 and DM29 of the DMPLP, Policies CS2, CS13 and CS15 of the CS and Policy D6 of the LP. In summary, and amongst other matters, these policies seek to ensure developments of a high quality of design including through their provision of internal and external spaces. These policies also seek to ensure satisfactory living conditions for both future and surrounding occupiers. The Council's second reason for refusal also cites conflict with Policy CS12 of the CS and Policy DM28 of the DMPLP together with conflict with the advice at paragraphs 194 and 195 of the Framework. These policies and advice relate to the implications of development upon heritage assets and are not relevant to the findings I have made on this main issue.

Planning obligations

25. The application subject to the appeal was recommended for approval by Council Officers. That recommendation, which was overturned by Members of the Planning Committee, was subject to a schedule of conditions and a planning obligation under section 106 of the Town and Country Planning Act 1990 (as amended) (the Planning Act). Although the appellant has indicated a willingness to enter into the section 106 legal agreement, I do not have an agreement before me.
26. I particularly note that no vehicle parking spaces are proposed and that the development is proposed to be car-free. Amongst other matters Policy DM16 of the DMPLP 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 located within an area with such characteristics.
27. To deliver a car-free development a mechanism is required to ensure that occupiers of the development would not be eligible to apply for a parking permit within the controlled parking zone operating within the area, unless there was an exceptional reason such as they were a Blue Badge holder. Without ensuring the parking permit ineligibility, it has not been shown to me that the occupants of the development could not apply for parking permits with the consequential increases in demand for on-street parking that would result. Furthermore, in failing to constitute a car-free development, the proposal would not be minimising the need to travel by car as referenced within the justification to Policy DM16.
28. Therefore, and on the grounds of delivering a car-free development alone, I have no reason to conclude that a planning obligation under section 106 of the Planning Act is not necessary to make the development acceptable in planning terms. It would be required, amongst other matters, so that the development complied with Policy DM16, would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. Such an obligation would therefore accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out at paragraph 57 of the Framework.

Other Matters

29. The principle of the proposed development would be acceptable at the location whilst the site would also be located within an accessible location with, as I have already acknowledged, access to a range of services and facilities. The proposed flats may also exceed the minimum internal space standards and be dual aspect whilst I note that the Council did not conclude that the proposed development would harm the living conditions of neighbouring occupiers including in relation to their daylight and sunlight. However, the absence of harm in relation to these matters is a neutral factor and weighs neither for nor against the proposal.
30. The development may comply with building regulations, however, this is a separate regime to planning permission and as such is not a determinative factor in my decision.
31. The Council's second reason for refusal makes a reference to paragraph 203 of the Framework which provides advice in relation to development and non-designated heritage assets. However, the Council have not elaborated further upon this. Although in the first main issue I have identified harm to the setting of Nos 694A, 696A and 698A, I also concluded that the development would incorporate a design in keeping with the host property and the character of the area more generally. Given such circumstances, I have no firm basis on which to conclude that there would be any harm to a non-designated heritage asset or, in turn, conflict with paragraph 203 of the Framework.
32. Finally, I note that the Council have not submitted a Statement of Case but there is no obligation upon them to do so. As referenced elsewhere in this decision, the application for costs is the subject of a separate decision.

Conclusion

33. In the first main issue I have identified that less than substantial harm to the significance of the Grade II listed properties 694A, 696A and 698A High Road would result and that there would be conflict with policies within the development plan. The Framework confirms that great weight should be applied to the conservation of designated heritage assets. The Framework also sets out, at paragraph 202, that where a development proposal would lead to less than substantial harm to a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
34. The proposal would make use of brownfield land and utilise it more intensively so as to deliver more homes. In so doing, the proposed development would use airspace above existing premises as is referenced at paragraph 120 of the Framework. With 4 units provided the contribution to housing supply would be quite modest but nevertheless valuable and I attribute this moderate weight.
35. The appeal site is presently vacant and the proposed development would allow for re-occupancy which would make a contribution to the vitality of the area. The provision of a green roof and green wall system may provide some biodiversity gain whilst I also note that it is proposed to improve the energy efficiency of the host building. The proposal would provide for a dedicated bin store and, in so doing, may prevent bins being sited on the highway in an unsightly manner. These are each further modest benefits of the proposal.

36. Taken together and, given that the harm I have identified to the designated heritage assets is a matter of considerable importance and weight in my determination, the public benefits would be insufficient to outweigh the harm I have identified.
37. Furthermore, whilst I have identified in the second main issue that appropriate living conditions would be provided for future occupiers of the proposed development I have, in my final main issue, concluded that a planning obligation under section 106 of the Planning Act is necessary to make the development accord with the development plan and be acceptable in planning terms. No such section 106 agreement has been completed and, in its absence, the proposal is in conflict with the development plan.
38. Therefore, and although the proposed development would accord with various development plan policies, the development would conflict with the development plan as a whole. I have had regard to other considerations material to the appeal including the content of the Framework but conclude that there are no such considerations of sufficient weight to indicate a decision other than one in accordance with the development plan. The appeal is therefore dismissed.

H Jones

INSPECTOR