



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: 29 June 2023

Appeal Ref: APP/U5930/W/22/3310509

96 Lansdowne Road, Leytonstone E11 3EY

- 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 Abdul Ghaffar Ghani against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 213200, dated 1 October 2021, was refused by notice dated 5 May 2022.
 - The development proposed was originally described as "Demolition of existing garage and erection of a one bed two storey dwelling house at the rear of 96 Lansdowne Road, E11 3EY."
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effects of the proposed development upon the character and appearance of the area;
 - The effects of the development upon the living conditions of the occupants of 94 and 96 Lansdowne Road and 26 Montague Road and, whether appropriate living conditions would be provided for the future occupants of the proposed dwelling; 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

3. The appeal site contains the residential property 96 Lansdowne Road, the garden and driveway areas serving it and, to the rear, a garage building. The local area is predominantly residential in character. Within the area there are tall blocks of flats and long rows of traditionally designed terraced properties. However, No 96 is located at the end of a short row of adjoining residential properties. Further short rows of terraced properties are located nearby including on the opposite side of Lansdowne Road and, to the rear of the garage on Montague Road. These short rows of terraced properties are predominantly two storey. Many share design features of a very similar appearance such as the brickwork to the elevations, the tiles to the roof slopes and the window and door apportionment and design. These short terraced rows

are arranged in a regular pattern, quite evenly spaced apart whilst there is an even extent to which many of these properties are set back from the roadside. Together, these elements bring a strong sense of consistency to the immediate surrounds to the site.

4. In the proposal, a house would be introduced between two rows of houses and sited closely beside the side elevation of one existing house and the rear elevation of another. Although the first floor front wall would be set-back, the ground floor elevation and first floor roof terrace of the proposed house would come much closer to the roadside than the neighbouring dwellings presently do. In doing so, the proposal would be at odds with the layout of the short rows of houses that neighbour the site and would disrupt the established pattern of residential development.
5. Aside from the areas of glazing the entirety of the first floor of the proposed house would be faced with a black standing seam zinc cladding. The front elevation wall at ground floor would be faced with a timber slatted cladding which would also extend upwards to partly enclose the first floor roof terrace area. The incorporation of these materials to the extent proposed would not be in keeping with the neighbouring houses which are generally characterised by the incorporation of traditional brick and roof tile materials. In this context such extensive use of such dissimilar materials would be incongruous. Furthermore, the proposed front boundary, to comprise of a metal railing, would be situated adjacent to a brick wall enclosing the front gardens of neighbouring properties on Montague Road to one side and fencing and a brick wall at 96 Lansdowne Road on the other. The introduction of a further enclosure of this form and in this location would result in a discordant run of dissimilar materials which would be unsympathetic to the street scene.
6. As a result of this combination of factors the proposed development would be unconventional within its context, would appear out of place and cause harm to the street scene. The effects of the proposed development upon the character and appearance of the area would, therefore, be unacceptably harmful. In coming to this view, I acknowledge that the appeal site is not within a conservation area nor does it contain any listed buildings whilst I accept that the proposed house would be modestly scaled. Nevertheless, for the above reasons, I have identified harm. Given the harm I have identified, for the reasons that I have set out, whether or not there are any deficiencies with the level of detail shown on the submitted plans is not a determinative factor in my decision. Finally, I accept that the design of the proposed house which would adopt a contemporary approach would not be wholly without its merits, however, in this particular context and for the reasons identified the proposal would be harmful.
7. Therefore, the proposed development would be contrary to Policy CS15 of the Waltham Forest Local Plan Core Strategy, March 2012 (CS) and Policies DM4 and DM29 of the Development Management Policies Local Plan, October 2013 (DMPLP). In summary, and amongst other matters, these policies require development proposals to respond positively to local context and character, take account of urban form and patterns of development and respect their context. I also find that the proposal would be in conflict with guidance within the Urban Design Supplementary Planning Document, February 2010 which places emphasis on the need for development to appropriately integrate with its surroundings.

8. I find no conflict with Policies CS13 and CS16 of the CS or Policy DM33 of the DMPLP, also cited within the Council's reasons for refusal. These policies relate to promoting health and wellbeing, minimising crime and improving safety and as such, are largely irrelevant to the harm I have identified.

Living conditions

9. The short rows of terraced properties to the surroundings of the appeal site and, which 96 Lansdowne Road forms a part of, are generally served by smaller front and larger rear gardens. Owing to the separation distances to neighbouring properties, these garden spaces also benefit from having a generally open aspect.
10. The proposed house would abut the common boundary with neighbouring 26 Montague Road. The first floor roof terrace would project farther forward than the front elevation of No 26 and be sited closely beside its driveway and front garden. The proposed roof terrace would be of quite considerable depth and width and therefore provide a quite large and usable space for sitting out. The plans show that no high privacy screen would be sited on the side of the roof terrace adjacent to No 26. Given this positioning and proximity relative to the front garden and front elevation windows of No 26 and, owing to its design and dimensions, the proposed roof terrace would permit views across the front garden of No 26 and toward its front elevation windows. Such views would be unduly invasive and would result in an unacceptable infringement upon the privacy of the occupiers of No 26. Though there are no windows within the side elevation of No 26 this would serve as no mitigation for the overlooking of the front of the property that would take place. The appellant states that the proposed development meets "the 45-degree rule" in relation to No 26 but it has not been demonstrated to me how this would ensure that the infringement upon privacy I have identified would not take place.
11. In the first main issue I have, amongst other matters, identified that the particular use of materials in the proposal, including the extent of timber slatted cladding proposed would be harmful. The one privacy screen shown on the plans consists of this timber and it has not been shown to me that the provision of a second privacy screen so as to mitigate the effects upon the occupants of No 26 would not entail the provision of further harmful material finishes. As a result, I am not satisfied that the harm to the living conditions of the occupants of No 26 could be resolved through the imposition of a condition.
12. The garden fencing forming the boundaries to the back garden of 94 Lansdowne Road is lower to the sides and higher at the rear. The existing garage to the rear of No 96 which the proposed house would replace runs alongside a proportion of the garden at No 94. The proposed house would be considerably larger in scale than the existing garage. It would be wider and, therefore, would run alongside an increased proportion of the garden of No 94. The proposed house would be considerably taller and the rear elevation which would be finished in a combination of brickwork and the zinc cladding, would form a large, solid mass. Given this scale and design and, the extent to which it would run along the common boundary, the proposed house would form a dominant and overbearing feature when viewed from the garden of No 94.
13. No 96 has a single storey rear extension which contains windows and French doors that face its rear garden and the existing garage. The side elevation of the proposed house, which would almost extend to the whole width of the No

96 plot, would flank this garden and extension. The separation distance between the proposed house and the rear extension at No 96 would be short whilst it would abut the garden. Together with the increased scale in comparison to the existing garage and fence currently present and again, given the solid mass that would be created by the material finishes, the proposed house would also form a dominant and overbearing feature when viewed from the garden of No 96 and from within the single storey rear extension.

14. The Council's reasons for refusal also cite that a loss of daylight and sunlight would also result upon the occupants of Nos 94 and 96. The proposed house would be sited directly north of No 96 and to the north-east of No 94. The sun will therefore appear to move in an arc in the southern sky rather than the north. Therefore, no significant loss of direct sunlight or significant increase in shadowing would result at those properties. Given the increased scale of the proposed house and the proximity of it to Nos 94 and 96 some reduction in daylight may take place. However, I have no substantive evidence before me that this would be to a significant degree and given my conclusions in respect of sunlight, I find that any effects wrought by the proposal with regards to the levels of light received at Nos 94 and 96 would not, in the round, be unduly harmful.
15. At first floor there is a large window and rooflight proposed which together would provide a substantial amount of glazing to the single bedroom. The outlook opposite this bedroom and beyond the roof terrace would be across Montague Road and, therefore, no building would flank at close proximity. Given these factors the first floor of the proposed house would be provided with both adequate outlook and light.
16. However, at ground floor the door and single window proposed would serve a combination of living space, kitchen and bathroom. The amount of glazing proposed within the front elevation at ground floor would be less than the first floor. Rooflights are proposed but these would be above a staircase area not the main usable space of the ground floor. Therefore, the ground floor would not benefit from the same light or outlook that the first floor bedroom would.
17. This ground floor window provision, within only a single elevation of the property, coupled with it serving such a range of accommodation at ground floor level, would provide for compromised living conditions. The levels of outlook from and, light that would be received by, that space would be limited. Moreover, and as Policy D6 of the London Plan, March 2021 (LP) sets out, single aspect dwellings can be prone to a number of issues aside from restricted outlook or light and this includes inadequate ventilation and overheating. It has not been shown to me that the proposed dwelling would not suffer from such issues. Therefore, by reason of its specific design and single aspect nature at ground floor, the property would fail to provide adequate living conditions for the future occupants of the dwelling.
18. In coming to this view, I acknowledge that the ground floor would be largely one open plan space and, would not be divided by a series of walls. Nevertheless, for the above reasons, I find that the ground floor would provide unacceptably compromised living conditions.
19. The Council have set out that the development would meet necessary internal space standards and that the provision of outdoor amenity space to serve the development would be acceptable, and I have no reason to disagree. However,

that the proposed development may be acceptable in these regards is a neutral factor in my determination.

20. Therefore, although I have concluded no unacceptable reduction in light would result for the occupants of 94 and 96 Lansdowne Road, the proposed house would still harm those occupants by reason of appearing dominant. An unacceptable infringement upon the privacy of the occupiers of 26 Montague Road would occur. Appropriate living conditions would also not be provided for the future occupants given the ground floor design and single aspect nature of the proposed house.
21. Consequently, the development would be in conflict with Policies CS2, CS13 and CS15 of the CS, Policies DM29 and DM32 of the DMPLP and Policy D6 of the LP. In summary, and amongst other matters, these policies state that in order to facilitate sustainable housing growth all new housing development must be of a high quality of design which takes account of patterns of development and ensures that satisfactory amenity is provided for future and surrounding occupiers. Policy D1 of the London Plan, 2021, also referred to by the Council, which principally focuses upon the undertaking of area assessments and preparation of development plans for London boroughs, is not particularly relevant to living conditions and, therefore, I find no conflict with its content. The Council also cited Policy DM7 of the DMPLP within its refusal reasons. I have identified no deficiencies in the internal or external space standards that would be provided for by the proposed dwelling and therefore it follows that there would be no conflict with Policy DM7 which details such standards.

Planning obligations

22. Although the appellant has indicated a willingness to enter into a legal agreement under section 106 of the Town and Country Planning Act 1990 (as amended) (the Planning Act), I do not have an agreement before me.
23. Policy DM36 of the DMPLP, amongst other matters, sets out that where necessary the Council will seek planning obligations in order to deliver development and that such obligations may relate to transport and highways matters.
24. Furthermore, the Planning Obligations Supplementary Planning Document, May 2017 (SPD) encourages car-free development in locations within controlled parking zones that are easily accessible by public transport and where amenities, including shops and leisure facilities, are within easy walking distance. The appeal site is located within an area with such characteristics and no vehicle parking spaces are proposed within the development.
25. 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 within the controlled parking zone. Furthermore, the proposal would not be minimising the need to travel by car.

26. 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 DM36 of the DMPLP and the guidance contained within the SPD. Furthermore, it 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

27. The appellant submits that the Council's case officer originally recommended the planning application for approval but that their manager disagreed, hence the refusal. The evidence to substantiate this course of events is disputed by the Council. Regardless, these matters are not very relevant to the merits of the case.
28. The proposed development may provide levelled access and comply with building regulations, however, this is a separate regime to planning permission and as such is not a determinative factor in my decision. The proposed development may incorporate measures to prevent crime, provide waste and recycling facilities and, cycle parking, whilst it may not cause or be the subject of flood risk or drainage problems. However, these matters are neutral factors in my determination which weigh neither in favour nor against the proposal.

Conclusion

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
30. The proposal would boost housing supply in the area and align with policies within the development plan which seek such supply increases. However, this benefit would be moderated given that only a single dwelling would be provided. The proposed house would incorporate a green roof which may provide a number of benefits including to biodiversity. The appellant also submits to me that the existing garden at No 96 would marginally increase in size. However, none of these factors override the harms which I have identified would be caused in the main issues. Those being the harm to the character and appearance of the area, to the living conditions of existing and proposed occupants or as a result of the absence of planning obligations.
31. 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