



Appeal Decision

Site visit made on 12 June 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2023

Appeal Ref: APP/B5480/W/22/3295832

R/O 125 Rothbury Avenue, Rainham, Essex, RM13 9HY

- 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 Raj Mahal, rd group, against the decision of the Council of the London Borough of Havering.
 - The application Ref P0017.22, dated 7 January 2022, was refused by notice dated 11 March 2022.
 - The development was originally described as proposed 1 bedroom detached bungalow.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

- The effect of the proposed development on the character and appearance of the surrounding area;
- The effect of the proposed development on green infrastructure and biodiversity;
- Whether the proposed development would provide acceptable living conditions for future occupants, with regard to sunlight and daylight;
- Whether the proposed development would provide an adequate and safe access; and
- The effect of the proposed development on pedestrian and highway safety.

Reasons

Character and appearance

3. The appeal site comprises the rear garden of No 125. The site contains an outbuilding and garage structure. A grassed lane provides access to the appeal site as well as the rear of properties along Eastwood Drive. The surrounding area is characterised by a mix of two-storey terraces, semi-detached dwellings, and bungalows. No 125 has a larger rear garden than other dwellings in the locality.
4. Views of the development would be limited as it would be located to the rear of No 125. The dwelling would be single storey and have a hipped roof. Nonetheless, the proposed dwelling would be out of character with the pattern

of development of the area. The area is characterised by a strong pattern of development with dwellings facing the highway. Rear gardens are largely characterised by outbuildings and garages situated towards the rear boundary.

5. As a result of the proposal's bulk, scale and height, the development would result in a greater built form than the existing outbuildings within the appeal site and nearby outbuildings and garages. Furthermore, the characteristics and appearance of a dwelling cannot be directly compared to an outbuilding. The proposal would fail to respond to building forms and pattern of development of the surrounding area due to the scheme's siting, scale, and layout. Consequently, the development would appear intrusive and would not contribute to the character and appearance of the area as it would be an incongruous addition.
6. For these reasons, the proposed development would cause harm to the character and appearance of the surrounding area. Consequently, it would conflict with Policy 26 of the Havering Local Plan 2016-2031 (2021) (LP) which promotes high quality design and supports development proposals that respond to distinctive local building forms and patterns of development and respect the visual integrity and established scale, massing, rhythm of the building of the surrounding physical context.

Green infrastructure and biodiversity

7. The supporting text of Policy 10 of the LP states that private gardens provide, besides important amenity and privacy roles, important ecological, drainage and flood mitigation functions. As a form of green infrastructure, these functions should be considered when any loss of garden land is proposed.
8. The main parties disagree regarding the amount of soft landscaping proposed, and the appellant has suggested a soft and hard landscaping planning condition. The small size of the plot restricts the extent of soft landscaping, and the development would have a large footprint with ancillary hardstanding. However, as stated above, the site currently contains two buildings. These buildings have concrete hardstanding's, and their footprint is not significantly different to that of the proposed dwelling. There is also existing hardstanding to the front of the garage building and by the existing entrance.
9. The existing trees are not protected by a TPO and the appellant highlights that they could be pruned or removed. In relation to this main issue, I am satisfied that the Arboricultural report is adequate, and that the development could integrate with the trees. A planning condition could ensure that the trees are protected throughout the construction period (including protecting the root protection areas and ensuring suitable foundation design) and in the long term. Taking into account the size of the existing buildings and the extent of existing hardstanding as well as the majority of the trees would be retained and subject to conditions relating to soft landscaping and the existing trees, I am satisfied that the proposal would not result in significant adverse impacts on green infrastructure and biodiversity.
10. For these reasons, the proposal would not have an unacceptable effect on green infrastructure and biodiversity. Consequently, in this regard, it would not conflict with the aims of Policies 10 and 27 of the LP which support proposals where they do not result in significant adverse impacts on green infrastructure and biodiversity that cannot be effectively mitigated, and maximises

opportunities for greening and supports natural habitats and opportunities for enhancing biodiversity. It would also not conflict with aims of Policy G6 of the London Plan (2021) which states, amongst other things, that development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain.

Living conditions

11. The appellant highlights that the proposal exceeds all space standards, and the block plan shows that the front garden would be screened from the access lane. There are a number of trees within the appeal site and along the boundary which could affect the levels of light reaching the proposed dwelling and garden. The majority of the mature trees are to the rear of the proposed dwelling, and only an obscured bathroom window is proposed to the rear elevation. Furthermore, the side window would serve the kitchen/ lounge. This room would also be served by a window and glazed doors to the front.
12. I have considered the Arboricultural report which shows trees T14 and T15. However, I am not satisfied that it accurately reflects all the trees at the appeal site. I observed on my site visit that there were additional trees than that shown in the Arboricultural report, for example between the existing outbuilding and garage building.
13. I am not satisfied that the dwelling and garden would receive acceptable levels of light and that they would not be overshadowed by the existing trees. This is because of the number of nearby trees (including their height) and limited gap between the proposed windows and trees (given the small size of the plot) as well as the relationship of the trees with the proposed garden. A daylight and sunlight report has not been submitted to suggest otherwise. Consequently, based on the evidence presented, the proposal would result in poor quality accommodation.
14. For these reasons, the proposed development would not provide acceptable living conditions for future occupants, with regard to sunlight and daylight. Accordingly, the proposal would be contrary to Policy 7 of the LP which states, to ensure a high quality living environment for residents of new developments, the Council will support residential developments that are sited and designed to maximise daylight and sunlight. It would also conflict with Policy D6 of the London Plan (2021) which states the design of development should provide sufficient daylight and sunlight to new housing, whilst minimising overshadowing and maximising the usability of outside amenity space.

Access

15. Access to the dwelling would be via the access lane which is a private right of way. There is a reasonable distance between Rothbury Avenue and the entrance of the site. As a result of the access lane being grassed it would fail to be inclusive, particularly for wheelchair users, people with mobility constraints and with a buggy.
16. The appellant highlights that they use the access several times a day and there has been no crime along the access lane. There are some rear, first-floor windows which would have views of the access lane. Nonetheless, given the distance from these windows to the access lane, and intervening outbuildings, garages, and fences there is limited natural surveillance of the access lane. The

access could be perceived as insecure as a result of the length of the access lane, limited natural surveillance and lack of lighting.

17. I have considered the suggested planning conditions relating to lighting and ensuring the access lane is resurfaced. The appellant asserts that the access lane does not need to be in their ownership. They state that an applicant does not need to have ownership of a private right of way and highlight that their maintenance is a private matter. However, I am not satisfied that the conditions would be a suitable mechanism or adequately address the reason for refusal, particularly in the long term given ownership constraints. Consequently, the development would not provide a high standard of inclusive access for all members of the public or good access with natural surveillance.
18. The appellant considers that similar developments have been approved with unmade, privately owned, narrower, longer and overgrown unlit alleyways/tracks¹. Limited information has been provided regarding the other developments to make a robust comparison. Nonetheless, as highlighted by the Council, the setting and context of the sites differ to that of the appeal site, including their planning histories. In addition, a new local plan has been adopted since those applications were considered. In any event, I have determined the appeal proposal on its own merits.
19. For these reasons, the proposed development would not provide an adequate and safe access to meet the needs of future occupiers. Accordingly, it would conflict with Policies 7, 10 and 26 of the LP. These collectively seek, amongst other things, to ensure proposals provide a high standard of inclusive access for all members of the public and good access with natural surveillance. It would also conflict with Policies D5, D6 and D11 of the London Plan (2021). These collectively seek, amongst other things, to ensure development proposals achieve the highest standards of accessible and inclusive design and development should include measures to design out crime – in proportion to the risk. In addition, the proposal would be contrary to paragraph 110(b) of the Framework which states development proposals should ensure safe and suitable access to the site can be achieved for all users. Having regard to the scale of the development, existing use of the access and suggested planning conditions, I give limited weight to these conflicts.

Pedestrian and highway safety

20. The access lane is narrow. The appellant asserts that similar developments have been approved with unmade, privately owned, narrower, longer and overgrown alleyways/tracks². They have submitted a block plan with swept path. The swept path analysis only covers the access to the entrance of the site and does not show swept paths from the access lane onto Rothbury Avenue. The proposed 2.1m fence to the front of the dwelling and adjacent to the lane entrance would impede visibility.
21. Having said that, the appellant highlights that they use the alley way several times a day for loading and unloading their van. A local resident has stated that reversing vehicles have caused problems for people inside the access lane and pedestrians crossing the entrance by Rothbury Avenue. I observed on my site visit that there was a vehicle parked within the appeal site and the tyre tracks

¹ Including P1198.20, P1698.21, P0700.17 and P1428.20

² Including P1198.20, P1698.21, P0700.17 and P1428.20

on the access lane demonstrate that it is used by vehicles. There is also an existing fence, approximately 2.1m high to the front of the appeal site. The addition of a one, one-bedroomed dwelling would not result in significant vehicle or pedestrian movements. Rothbury Avenue is a residential street with limited vehicle and pedestrian movement.

22. Taking into account that the access lane and appeal site are currently used by vehicles, the scale of the proposal and the characteristics of Rothbury Avenue, I am satisfied that the development would not have an unacceptable impact on highway and pedestrian safety. Whilst I acknowledge residents' objections, their concerns are not supported by any substantive information that would justify the dismissal of the appeal on these grounds.
23. For these reasons and based on the evidence submitted, vehicles would be able to safely access and exit the site and the proposal would not have an unacceptable effect on pedestrian and highway safety. Consequently, in this regard, the proposed development would comply with Policies 10, 23 and 24 of the LP. These collectively seek, amongst other matters, to ensure good access and support development which ensures safe and efficient use of the highway.

Other Matters

24. My attention has been drawn to a certificate of lawfulness application³ granted for a single storey outbuilding at the appeal site. The granted outbuilding would have a similar built form to that proposed but, there is a visual difference between an ancillary outbuilding at the rear of the garden and a new dwelling within a subdivided plot with new hardstanding, refuse store, parking area and entrance. Furthermore, in terms of living conditions and access, the considerations for a new dwelling compared to an ancillary outbuilding cannot be directly compared. I give moderate weight to the granted outbuilding.
25. Based on the latest Housing Trajectory, the Council cannot currently demonstrate a five year supply of deliverable housing sites. Whilst the position with regard to housing delivery and supply is uncertain, consideration has been given to the effect of the tilted balance referred to in Paragraph 11(d) of the Framework. The proposal would contribute to housing supply. The benefits associated with the appeal scheme would carry very limited weight given the small scale of the development.
26. The Environment Agency has submitted an objection comment. The matters raised do not relate to the reasons for refusal. Given my findings in relation to the main issues, I have not considered the objection further as it would not be determinative to my decision.

Planning Balance and Conclusion

27. I have found that the proposal would be acceptable in terms of green infrastructure and biodiversity as well as pedestrian and highway safety. Nonetheless, the proposed development would cause harm to the character and appearance of the surrounding area, would not provide acceptable living conditions for future occupants and would not provide an adequate and safe access. I give moderate weight to the granted outbuilding and very limited weight to the benefits associated with the appeal scheme. Having regard to the

³ D0727.21

conflicts identified above, I conclude that the proposal would be contrary to the development plan, taken as a whole.

28. Given the Council's housing delivery position, consideration has been given to paragraph 11(d)(ii) of the Framework. Weight may still be afforded to policies depending on their consistency with the Framework. The most relevant policies are consistent with the aims of the Framework regarding the need to achieve well-designed places which are sympathetic to local character, create places with a high standard of amenity for existing and future users, and ensure safe and suitable access to the site can be achieved for all users. There is nothing within the Framework to suggest that those requirements of all development should be lessened on account of the shortfall in housing delivery. In that context, I attach significant weight to the conflict with the development plan.
29. In considering paragraph 11(d)(ii) of the Framework, I must determine whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. For the reasons given above, the proposed development would cause harm to the character and appearance of the surrounding area, would not provide acceptable living conditions for future occupants and would not provide an adequate and safe access. The benefits associated with the appeal scheme carry very limited weight. Consequently, the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
31. The proposal would be contrary to Policies 7, 10, 26, of the LP, and Policies D5, D6 and D11 of the London Plan and I afford this conflict with the relevant policies of the development plan significant weight.
32. For these reasons, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal does not succeed.

L Wilson

INSPECTOR