



Appeal Decision

Site visit made on 17 August 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2023

Appeal Ref: APP/G5750/W/22/3313233

45 Crofton Road, Plaistow, Newham, London E13 8QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Safdar Khan against the Council of the London Borough of Newham.
 - The application Ref 22/02138/FUL, is dated 31 August 2022.
 - The development proposed was originally described as "New development of 2no schemes, one new build 1-bedroom apartment on top of approved scheme which is being built, and secondly a new build 1-bedroom flat in the gap between the street corner and the new building at the land north of 43 Crofton Road. Landscaping to provide suitable amenity; Provisions for refuse and bicycle storage."
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Decision

1. The appeal is dismissed and planning permission for "New development of 2no schemes, one new build 1-bedroom apartment on top of approved scheme which is being built, and secondly a new build 1-bedroom flat in the gap between the street corner and the new building at the land north of 43 Crofton Road. Landscaping to provide suitable amenity; Provisions for refuse and bicycle storage" is refused.

Preliminary Matters

2. In part F of the appeal form the reason for the appeal given is that the Council refused planning permission. However, no decision notice was provided and, the appellant has since clarified that the reason for the appeal is that the Council failed to give notice of its decision on the planning application within the appropriate period. Section 78 of the Town and Country Planning Act 1990 provides that the applicant may appeal to the Secretary of State in such circumstances. Jurisdiction over the decision on the planning application has, therefore, been transferred from the Council to the Planning Inspectorate. I have determined the appeal on this basis.
3. The Council have provided an Officer Report¹ (OR) which details the Council's views on the proposed development and makes a recommendation to refuse planning permission. As it sets out the Council's reasoning to refuse planning permission, had it done so, the substance of this OR has informed the main issues of the appeal which I set out overleaf.

¹ Delegated Report Application for Planning Permission Application Number 22/02138/FUL, authorised 13 January 2023

Main Issues

4. The main issues are:

- The effect of the proposed development upon the living conditions of the occupiers of neighbouring properties on Crofton Road with particular reference to their outlook and privacy;
- Whether appropriate living conditions would be provided for the future occupiers of proposed flats 3 and 4 with particular reference to their private internal and outside space;
- Whether appropriate provision would be made for waste and recycling; and
- The effect of the proposed development upon the character and appearance of the area.

Reasons

The living conditions of neighbouring occupiers

5. The appeal site is located within an area of quite mixed character. There are commercial premises, and this includes a supermarket and car garage beside the appeal site. There are also many residential properties, generally in the form of traditionally designed terraces. Reflective of this, Crofton Road includes rows of terraced properties, the appeal site being beside the end of one such row. 43 Crofton Road is the end terrace which abuts the appeal site. Like many other terraced properties in the area, No 43 is served by a small front yard space and larger garden to its rear.
6. The totality of development proposed at the appeal site would provide 4 flats. The element of the proposed development which would contain proposed flats 1-3 would have a total of 3 floors of accommodation. I accept that this element of the proposed development would incorporate a stepped design, with a single storey element running along the common boundary with No 43. However, the uppermost storey of the build, even at its farthest point, would also be situated quite close to the No 43 plot. The proposed flats 1-3 build would have a flat roofed design. Consequently, it would have a high eaves level which would roughly match that of the ridge of the pitched roof of No 43. Therefore, in the proposal, high expanses of side elevation wall would be formed which would flank the rear garden of No 43 and tower over it. The proposed flats 1-3 build would, in total, be of significant depth and would project extensively past the back of the No 43 house.
7. Given the combination of its proximity, height and depth, the proposed flats 1-3 build would form a dominant and overbearing feature when viewed from the rear doors, windows, and garden of No 43. Consequently, the development would harmfully infringe upon the outlook of the occupiers of No 43. For these reasons and, although it may be the case that the entirety of the appeal site would not be filled by buildings, I cannot agree with the appellant that the proposed development would be modest and result in no impacts upon the use of neighbouring property.
8. Balcony and outside terraced areas would serve proposed flats 2, 3 and 4. Each of these outside spaces would be located close to the common boundary with

No 43 and be set at either first or second floor level. Although the Council have stated that no details have been provided in respect of privacy screening, the Design and Access Statement and Appellant's Statement submit that obscure glazed panels would be incorporated. Although they are each not especially clear, both the plans and the images provided indicate that at least some of the balcony/terraced areas would have obscure panels to one (southern) side.

9. However, even accounting for these side panels, the position of the terrace serving flat 4 and the balcony serving flat 3 would be such that extensive views over the rear garden of No 43 would be available over and, likely through, any balustrade feature on their western side. Some overlooking of the rear garden of No 43 would also be available from the flat 2 terrace, albeit this view would be much more acute and less invasive in comparison. Some overlooking of other gardens to the rear of Crofton Road would also result from these outside spaces, however, as other gardens would be situated farther from the appeal site this overlooking would, again, be less invasive.
10. I accept that as a terraced row, some overlooking of the garden spaces to the rear of properties on Crofton Road will already take place given the proximity of some first floor windows within the neighbouring houses. However, by reason of them being external spaces, there being a total of 3 such spaces and with those serving flats 3 and 4 having a particularly intimate relationship, I find that the degree of overlooking of the garden area of No 43 would be unduly intruding.
11. Therefore, I find that the effect of the proposed development upon the living conditions of the occupiers of No 43 Crofton Road with particular reference to their outlook and privacy, would be unacceptably harmful. In coming to this view, I acknowledge that efforts will have been made to design the proposed development so as to limit its impacts. However, for the reasons given, I have nevertheless identified that the proposed development would be harmful.
12. The proposed development would therefore conflict with Policies D3 and D6 of the London Plan, March 2021 (LP) and Policies SP3, SP8 and H1 of the Newham Local Plan, December 2018 (NLP). In summary and, amongst other matters, these policies require that developments be of high quality, are of a form that is appropriate to their surrounding context and, which minimise overlooking and overbearing impacts.

The living conditions of the future occupiers of flats 3 and 4

13. Amongst other matters, Policy D6 of the LP sets out private internal and private outside space standards which housing developments are required to meet. The requirement that housing development meets internal space standards and provides adequate private outside space is also stated within Policy H1 of the NLP. Although the internal space standards set out within Policy D6 are generally reflective of those within the Technical Housing Standards – Nationally Described Space Standard (NDSS), there is some inconsistency between the minimum floor to ceiling height requirements. As the most recently adopted part of the development plan relevant to this issue, I give the greater weight to the standards set out within Policy D6 rather than the NDSS.
14. Although the appellant's plans and documents which accompanied the planning application include references to the proposed development being space standard compliant, the Council's analysis of these identify specific instances

where they consider this would not be the case. The Council submit that proposed flats 3 and 4 would be served by a private outside space of less than 5m². Furthermore, the Council also submit that those same two flats would not achieve the minimum floor to ceiling height of 2.5m for at least 75 per cent of their gross internal area.

15. I have been provided with no compelling evidence which counters the Council's submissions, which demonstrates to me that their measurements are inaccurate or, in turn, that the ceiling heights and private outside spaces of proposed flats 3 and 4 would meet the private internal and outside space standards of Policy D6.
16. The internal and private outside space standards within Policy D6 of the LP are a minimum requirement and exceedance of them is encouraged. In it not having been shown to me that the proposed development would meet these minimum requirements, I find that the scheme would not be delivering homes of high quality and that appropriate living conditions would not be provided for the future occupiers of proposed flats 3 and 4.
17. In coming to this view, I acknowledge that there are public open spaces within the local area which the future occupiers of the proposed development would have access to. However, the existence of these spaces does not negate the need for the proposed flats to be served by appropriately designed private outside space.
18. Whilst proposed flats 3 and 4 may adhere to other specific requirements of the space standards and, flats 1 and 2 may have no deficiencies in these regards, as all the flatted development proposed has not been shown to meet all the space standard requirements, conflict with Policy D6 of the LP and Policy H1 of the NLP would, nevertheless, result.

Waste and recycling

19. Within the ground floor undercroft, a dedicated bin store area is proposed enclosed by timber doors and a section of green wall. Although the Council refer to particular bin types that would be required to serve the development, very limited information is before me on their dimensions or storage requirements. It has not been shown to me that the dedicated bin store area proposed is deficient in terms of either its storage capacity or the operation of the timber doors.
20. I note the ground floor plan indicates further space of no particular purpose within the undercroft space close to the proposed bin store. Therefore, I find that it is likely that there would be available space within the undercroft to ensure the acceptable storage of waste and recycling. A path is proposed which would connect the undercroft space to the street and I have no reason to conclude that this path would not adequately enable bins to be put-out and retrieved on collection days. Furthermore, had I allowed the appeal, I am satisfied that precise design details of the bin storage could be appropriately ensured via a condition.
21. Therefore, the proposed development would provide appropriate provision for waste and recycling in accordance with Policy INF3 of the NLP and Policies D3, D6 and SI7 of the LP in these regards. These policies require development to ensure that on-site handling and storage of waste and recycling meets the

needs of the development and local collection arrangements, as well as ensuring that developments would have a functional layout and would be efficiently serviced.

Character and appearance

22. Although the proposed flats 1-3 build would be 3 storey and would be taller than the single storey building to which it would attach to the north, its maximum height would be commensurate with that of the many neighbouring 2 storey terraced houses in the area. Therefore, in views towards the development from the north, including from the parking area to the rear of the supermarket, although a quite considerable step-up in height from the single storey building would be apparent, it would also be appreciable that the top height of the build would be similar to the terraced houses opposite.
23. Fronting onto Crofton Road would be the element of the build containing flat 4. The proposed flats 1-3 build would be set well back behind this, further into the appeal site. In views from Crofton Road the proposed flats 1-3 build would therefore be partly concealed by the development proposed to the front of it. Existing mature trees which line Crofton Road and the various neighbouring buildings including those on Cumberland Road would also, collectively, provide some obscuring of the proposed flats 1-3 build in various directions.
24. Therefore, whilst I accept that the scale and mass of the proposed flats 1-3 build would be quite substantial, it would not have an unduly imposing presence upon the street scene. For these reasons, I do not find, as the Council have put to me, that the proposed flats 1-3 build would form an excessive, insubordinate and dominant form of development within its context.
25. The effect of the proposed development upon the character and appearance of the area would, therefore, be acceptable. The proposed development would not conflict with development plan policies in this respect.

Other Matters

26. Planning permission has previously been granted for residential development at the site including through planning permission reference 19/03220/FUL. During my site visit, I noted that a development was in situ. However, the appeal proposals would differ from the previously approved development including by reason of the inclusion of a further storey of accommodation. Therefore, in several regards, the effects of the appeal proposals are not very comparable to the scheme previously approved, including in relation to matters relevant to living conditions which partly form the subject of my main issues. Consequently, the previously approved development at the site is of limited weight in my decision.
27. The appellant has submitted to me pre-application correspondence and states that the Council responded favourably toward the scheme at that stage and, later on, adopted a different position. However, I find that the evidence before me does not clearly demonstrate this. It may also be the case that since those pre-application exchanges, amendments to the scheme have been made so as to address points raised by the Council. Regardless, I must consider the appeal proposal on its merits and the previous pre-application process is not a determinative factor in my decision. In my assessment of the appeal scheme,

which include those changes made since the pre-application submissions, I have identified harm in relation to living conditions.

28. The appellant has emphasised that the proposed development represents high quality contemporary architecture. In the fourth main issue I have concluded that the effect of the development upon the character and appearance of the area would be acceptable. However, although there are detailed elements of the design of more merit, these are insufficient to outweigh the harm that I have identified in the first two main issues.
29. The appellant submits that the occupiers of the proposed flats and, neighbouring properties, would receive adequate daylight and sunlight whilst future occupiers would benefit from views. The site may be within a highly accessible and attractive location whilst the site itself is quite level and, thereby, would be easily accessed by a range of occupiers. The proposed development may also provide appropriate cycle parking. It is also put to me that the site would be appropriately drained, landscaped and would be energy efficient. However, the absence of harm in relation to such matters is a neutral factor in my determination and weighs neither for, nor against the proposal.
30. The Council refer to a planning permission for 3 dwellings, reference 21/01806/FUL at nearby 1-5 Cumberland Road. Whilst the Council have raised some concern that the appeal proposals may prejudice this nearby scheme, the conclusions of the OR do not make it clear to me that it is a point on which they raise a substantial objection. Given in the main issues I have already identified that the proposed development would result in unacceptable effects upon living conditions, the effects upon the Cumberland Road development is not a determinative factor in my decision nor one on which I must address in detail.
31. The evidence before me indicates that the site lies within the zone of influence of the Epping Forest Special Area of Conservation (SAC). If I were minded to allow the appeal, I would need to determine the effects on the integrity of the SAC. Even if no adverse effects would result, this would be a neutral factor in this appeal. However, given I am dismissing the appeal for other reasons, there is no need for me to consider this matter in detail.
32. During the planning application and, the appeal process, responses from interested parties raise objections to the development on various other grounds. However, since I am dismissing the appeal, it is not necessary for me to address these matters.

Conclusion

33. 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.
34. The appellant refers to the housing crisis and states that there is a shortage of housing within the Borough. In providing 4 new flats, the proposed development would make a modest, albeit valuable, contribution to housing supply and provide a choice of new homes. The proposed development would also redevelop a small brownfield site. In so doing, the proposal would comply with some policies within the development plan. This would include Policy H1 of the LP which, amongst other matters, encourages the development of windfall

sites in order to increase housing supply. For the same reasons the proposed development would also be compliant with some advice within the National Planning Policy Framework (the Framework) including that within paragraphs 60, 69 and 120.

35. A biodiversity net gain would be achieved through the proposal. Some economic benefits would be derived from the proposed development not only from its occupation but also during its construction phase. These represent further benefits of the proposed development.
36. On the other hand, in the first main issue I have identified that the effects of the proposed development upon the living conditions of the occupiers of No 43 Crofton Road would be unacceptably harmful. In the second main issue I have identified that the proposed development would not provide appropriate living conditions for the future occupiers of proposed flats 3 and 4 with particular reference to their private internal and outside space.
37. These adverse effects of the development are considerable. Even in a scenario whereby paragraph 11(d) of the Framework would be engaged, these adverse effects are sufficient to significantly and demonstrably outweigh the aforementioned benefits of the development when assessed against the policies in the Framework taken as a whole.
38. Therefore, and although the proposed development would accord with various development plan policies, the development would conflict with the development plan taken as a whole. This conflict is not outweighed by other considerations, including the Framework. In conclusion, for the above reasons, having taken account of the development plan as a whole and all other relevant material considerations, the appeal is dismissed.

H Jones

INSPECTOR