



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: 7 September 2023

Appeal Ref: APP/U5930/W/22/3311469

Land to Rear of 29 Renness Road, Walthamstow, Waltham Forest E17 6EX

- 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 M Sharif against the Council of the London Borough of Waltham Forest.
- The application, Ref 221985, was received by the Council 5 July 2022.
- The development proposed is a four storey residential scheme to comprise of 4 no. new homes to form 1 no. 1B1P, 2 no. 2B3P and 1 no. 2B4P flats.

Decision

1. The appeal is dismissed and planning permission for a four storey residential scheme to comprise of 4 no. new homes to form 1 no. 1B1P, 2 no. 2B3P and 1 no. 2B4P flats is refused.

Preliminary Matters

2. 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. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the description given on the original application albeit I have omitted some superfluous elements which are not acts of development.
3. The Waltham Forest Local Plan LP1 2025-2035 is emerging and is currently being examined. It therefore does not form part of the statutory development plan for the purposes of Section 38 of the Planning and Compulsory Purchase Act 2004. I have limited information before me on the precise stage at which this emerging plan is at, the level of unresolved objection that there may be to it or the degree of consistency of the relevant policies within it to the content of the National Planning Policy Framework, September 2023 (the Framework). However, the evidence before me indicates that it remains at a stage whereby its policies could be the subject of change. As a result, I attach only limited weight to the policies in the emerging plan.

Background and Main Issues

4. The Council have submitted an Officer Report and, following the submission of the appeal against non-determination, have also provided the specific reasons why it would have refused the planning application, had it determined the application within the statutory time period.

5. Given this context, the main issues are:

- The effect of the proposed development upon the living conditions of the occupiers of 29, 30 and 31 Renness Road with particular regard to privacy, outlook and light;
- Whether appropriate living conditions would be provided for the future occupiers of the proposed flats with particular reference to their private internal and outside space;
- The effect of the proposed development upon the character and appearance of the area;
- Whether appropriate provision would be made for waste and recycling;
- The effects of the construction phase of the development upon local highways; and
- Whether planning obligations are necessary to make the development acceptable and, if so, whether any necessary agreements have been entered into.

Reasons

The living conditions of the occupiers of 29, 30 and 31 Renness Road

6. The appeal site is located within an area of quite mixed character. There are commercial premises nearby but there are also many residential properties, generally in the form of traditionally designed terraces. These terraced properties are generally 2 storeys in height, though given the presence of some dormers and roof windows, it is clear that some have further accommodation within their roof spaces. These terraced properties are mainly served by small front and larger rear gardens. In many instances the rear gardens of properties abut, which helps ensure that houses are well spaced apart.
7. As existing, the appeal site is enclosed by a combination of timber fencing and sections of wall. During my visit, I noted that the appeal site contained a range of building materials including timber planks and bricks, whilst much of the ground was covered in low level vegetation. A small single storey structure was also within a part of the appeal site.
8. Nos 29, 30 and 31 Renness Road back onto the appeal site. Given the condition and content of the appeal site and the distances involved to the nearest houses on Forest Road, the rear of Nos 29, 30 and 31 are the subject of limited overlooking.
9. At 4 storeys, the proposed building would provide residential accommodation on more floors than many residential properties in the area, including those which are closest to Nos 29, 30 and 31. Each floor of the proposed building would include windows within its rear elevation and these would be opposite the rear of Nos 29, 30 and 31 and their back gardens. When within the rear of their houses and their back gardens, the occupiers of these neighbouring properties would, therefore, be overlooked by multiple storeys of accommodation. Given the existing conditions, this would constitute a significant change in circumstances for the neighbouring occupiers.

10. Furthermore, although its guidance is to be applied flexibly, the separation distances from the rear windows of the proposed building and, the houses and garden spaces of Nos 29, 30 and 31 would not adhere to that within the Urban Design Supplementary Planning Document, February 2010 (SPD).
11. Therefore, even with the mitigating effects of the privacy screens proposed to the balconies within the development and, even though the side elevations of the proposed building would be largely blank, the proposal would cause an unacceptable infringement upon the privacy of the occupiers of Nos 29, 30 and 31. In coming to this view, I also acknowledge that a landscaping scheme is proposed. However, this would be likely to take some time to mature and it has not been shown to me that it would be very effective at preventing the overlooking I have identified given the storeys of accommodation proposed and, the separation distances to the properties to the rear which would result.
12. Although 4 storey, the proposed building would be flat roofed. The top of its third floor would be comparable to the roof ridge height of the 2 storey properties adjacent to the site whilst the top of the fourth floor would be similar in height to the roof ridge of the 3 storey flats sited to the west. The top floor of accommodation would have recessed elements and, thereby, a lesser mass than the floors beneath it. Therefore, despite containing 4 floors of accommodation, the building's design would moderate the effects of its scale and mass.
13. The garden spaces between the appeal site and the houses at Nos 29, 30 and 31 contain trees. These trees will likely be having some effects upon the light received at those properties and will be providing some limitation to the outlook from some windows and garden areas. Albeit I accept that these effects are likely to be quite limited.
14. Further guidance within the SPD is provided in relation to sunlight and daylight and this includes recommended separation distances between habitable room windows and the opposing blank walls of 2 and 3 storey buildings. However, given that the proposal is for a flat roofed 4 storey building and, no wholly blank opposing walls would be involved, this guidance is not very reflective of the property relationships which would be formed in this particular case. In turn, it has not been shown to me that the proposal would conflict with guidance within the SPD in this specific regard.
15. Given this combination of factors, I find that the proposed building, including its projecting rear balconies would not form an unduly dominant or overbearing feature and that the effects upon the living conditions of the occupiers of Nos 29, 30 and 31 in specific regard to outlook and light would be acceptable.
16. Therefore, although the effects of the proposed development upon the living conditions of neighbouring occupiers would be acceptable in certain regards, I have identified that the effects upon the living conditions of the occupiers of 29, 30 and 31 Rennes Road with specific regard to privacy would be unacceptably harmful. The development would be contrary to Policy CS13 of the Waltham Forest Local Plan Core Strategy, March 2012 (CS), Policy DM32 of the Waltham Forest Local Plan Development Management Policies document, October 2013 (DMP document) and guidance within the SPD. In summary and, amongst other matters, these policies and provisions require developments to provide satisfactory living conditions for future and surrounding occupiers including in regard to their privacy.

The living conditions of the future occupiers of the proposed flats

17. Policy DM7 of the DMP document, Policy D6 of the London Plan, 2021 (LP) and the Technical Housing Standards – Nationally Described Space Standard (NDSS) each provide space standards which housing developments are required to meet. Space standards are also provided within emerging plan Policy 58, however, for the reasons I have already set out, this policy is of limited weight in my determination.
18. At ground floor, a 2 bedroomed, 4 person occupancy flat is proposed. The gross internal floor area of this flat as measured by the Council and, as provided by the appellant, would be below the 70m² standard required by Policy D6 of the LP, Policy DM7 of the DMP document and the NDSS.
19. Whilst Policy D6 of the LP sets out minimum standards for private outdoor space, Policy DM7 of the DMP document sets higher standards, and the LP indicates local standards should take precedence. Policy DM7 seeks to ensure that all homes, including flatted development, have access to an element of outdoor amenity space although the justification to the policy sets out that a flexible approach will be taken having regard to the circumstances of the case.
20. The private outside space areas for the proposed flats at first, second and third floors would fail to meet the standard set out within Policy DM7, that being 10m² per bedroom. The space deficiency for the 2 bedroomed 3 person occupancy flats at first and second floor would be considerable. Taking the appellant's figures, these flats would be provided with 6m² private outside space whilst the Policy DM7 requirement is 20m².
21. Although the appellant's plans and documents detail that each of the bedrooms and, the combined living, kitchen and dining spaces proposed would meet the various requirements of Policies D6, DM7 and the NDSS, the Council's analysis of these identify specific instances where they consider this would not be the case. The Council submit that the ground floor flat living, kitchen and dining space would be below the Policy DM7 requirement whilst it is also submitted to me that within 3 of the 4 proposed flats there would be bedrooms which would be smaller than the requirements of these policies and the NDSS.
22. 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 these room sizes would meet the space standards. Even if I were to accept the dimensions of the bedrooms and living, kitchen and dining spaces submitted on the plans, the gross internal floor area and the private outside space deficiencies would remain.
23. Many residential properties within the local area are served by spacious private outside spaces. In failing to provide the same for each of the flats, the appeal proposals are also at odds with the prevailing character of the area. Therefore, in these particular circumstances, I have no substantive evidence before me to indicate that the substandard outside space provision is appropriate in this case.
24. Furthermore, the internal and private outside space standards within Policies D6 of the LP and DM7 of the DMP document are a minimum requirement. Given that not all of the proposed flats 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 all of the proposed flats.

25. For the above reasons, the proposed development would be contrary to Policy DM7 of the DMP document, Policy D6 of the LP and also Policy CS2 of the CS which sets out that housing should be of a high quality of design and suitable to the needs of residents.

Character and appearance

26. Given the number of 2 storey properties within its surroundings, including some closely beside the appeal site, the 4 storey property would, I accept, form one of the larger buildings in the local area. Despite this, there are existing buildings nearby with a maximum height which would be comparable with that of the proposed building. Although there are intervening parcels of land and buildings separating them from the appeal site, this would include the 3 storey flats to the west and the concentration of 3 storey buildings at the traffic light-controlled junction east of the site. Therefore, that in the proposal, a building which would be taller than the nearby 2 storey terraced houses would front onto Forest Road, would not be incongruous.
27. The top floor of the proposed building would incorporate recessed elements and would be loosely L shaped. This design would serve to break up the mass of the uppermost floor of the proposed building and moderate the effects of the building's height. Given the design of the uppermost floor, I find that it would not be unduly prominent even with the steel cladding proposed at this level.
28. Furthermore, although many properties in the area are traditionally designed and incorporate traditional materials such as brick and red roof tiles to their roof pitches, there are exceptions. Buildings of a more contemporary design and material make-up are also present. This includes, east of the traffic light-controlled junction, residential flats and the fire station building. Therefore, that the proposed building would be flat roofed and would incorporate the steel cladding would not appear discordant given this context. I have no reason to conclude that other materials proposed within the development such as the London stock brick would be inappropriate and, had I allowed the appeal, I am satisfied that final material choices could have been ensured via the imposition of a condition.
29. Given the single storey study outrigger with the balconies above, I accept that the proposed building would have quite a significant total depth. In some views from the west, this would be appreciable. However, the study outrigger would be only single storey. The balconies above would serve only the first and second floors and not the third. Together with the recessed elements of the uppermost floor and the variance in the material finish which would be incorporated, the mass of this elevation would, therefore, be acceptably broken up. Furthermore, in some other views toward the appeal site from the west the combination of street trees and a large advertisement hoarding would provide some screening.
30. For the above reasons, I find that the effects of the proposed development upon the character and appearance of the area would be acceptable. In coming to the above views, I acknowledge that the appeal site is not located on a corner plot or other particular location whereby the siting of a taller building

may be a common and deliberate urban design approach. Nevertheless, for the reasons that I have set out, the proposed development would not be harmful.

31. Therefore, and in these regards, the proposed development would comply with Policy CS15 of the CS, Policy DM29 of the DMP document, Policy D4 of the LP and the guidance within the SPD. In summary, and amongst other matters, these policies and provisions require that development responds positively to local context and character, provides a high standard of urban and architectural design and, that the design quality of a scheme is maintained. I also find that the proposed development would comply with advice contained within the Framework, including that at paragraph 130 which, requires development to be visually attractive and sympathetic to local character.
32. The Council also refer to Policy D1 of the LP. This policy principally focuses upon the undertaking of area assessments and preparation of development plans for London boroughs. Consequently, I find that it is not particularly relevant to this main issue.

Waste and recycling

33. Although the submitted plans are not especially clear, they indicate that 2 dedicated refuse storage areas, set either side of the footpath serving the stairwell access, would be provided.
34. Although the Council refer to particular bin types which 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 refuse storage areas would be deficient in terms of their storage capacity.
35. The proposed refuse storage areas would be conveniently located adjacent to the highway and the aforementioned path whilst I have no reason to conclude that this would not adequately enable bins to be put-out and retrieved on collection days.
36. Given that the proposed refuse storage area would be appropriately located and would not be inadequately scaled, I have no reason to conclude that it would be likely to cause unacceptable smells or cause problems with vermin.
37. Neighbouring properties and land on Forest Road are partly enclosed by a combination of low brick walls and timber fencing. The proposed refuse storage areas would be enclosed by a timber slatted screen and beside them a front boundary wall is proposed. This approach would therefore be reflective of the area and ensure that the proposed refuse storage areas would appropriately assimilate into the surroundings.
38. Therefore, the proposed development would make appropriate provision for waste and recycling in accordance with Policies CS6, CS13 and CS15 of the CS, Policy DM32 of the DMP document and, guidance within the SPD. These policies require development to be served by adequate and well-designed waste and recycling storage, collection and disposal facilities whilst they also seek to ensure healthy communities. The Council also refer to Policies DM23, DM24 and DM30 of the DMP document. However, these policies relate to a range of matters including health impact assessments, pollution and inclusive design, each of which I find to be largely irrelevant to this main issue.

The construction phase

39. The construction phase of the proposed development could cause a degree of disruption to the local highway network. However, given the scale of the development proposed any such disruption would likely take place for a relatively short duration.
40. Although no construction logistics plan has been submitted, the management of the construction phase of the development is a matter which can, dependent upon the circumstances of the case, be adequately resolved via the imposition of a condition.
41. I have been provided with no substantive evidence which demonstrates that there are any particular aspects of the development proposed, any site constraints or, conditions on the local highway network which would make the construction phase of the development in this case especially complex. Furthermore, whilst I note that Policy DM13 of the DMP document states that development proposals should be supported by construction logistics plans where appropriate, I have been provided with no substantive evidence why such a plan could not be submitted pursuant to the imposition of a condition.
42. Therefore, if I had allowed the appeal, I am satisfied that through the imposition of a condition requiring the submission and approval of a construction logistics plan, the effects of the construction phase of the development upon local highways would be acceptable. In turn, the proposed development would comply with Policies CS7 and CS15 of the CS and, Policies DM13 and DM16 of the DMP document. In summary, and amongst other matters, these policies require development to be safe, minimise their transport related impacts and be supported by construction logistics plans where appropriate.

Planning obligations

43. No vehicle parking spaces are proposed and, the development is proposed to be car-free. To deliver a car-free development a mechanism is required to ensure that occupiers of the proposed 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.
44. Therefore, and on the grounds of delivering a car-free development, 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 Policies DM16 and DM36 of the DMP document and the guidance contained within the Planning Obligations Supplementary Planning Document, May 2017. 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.

45. Running alongside the frontage of the appeal site is a foot and cycle path together with a dropped kerb crossover. Yellow line road markings also run along the carriageway beside the site. Based on the evidence before me and my own observations on site, I have no reason to conclude that the foot and cycle path and, the yellow lines are in an unacceptable condition. With no vehicular parking proposed within the site, the need to remove or otherwise alter the existing crossover is also not clear to me. With no alterations to the crossover proposed or, having been shown to me as being necessary, there would also be no consequential effects upon the yellow lines nor the foot or cycle path.
46. Finally, the Council submit that a financial contribution towards the monitoring of a construction logistics plan is necessary. However, I have been provided with no precise detail in relation to what monitoring would be necessary or, why the Council would be unable to undertake such monitoring without a specific financial contribution.
47. In such circumstances, it has not been shown to me that a section 106 agreement for the purposes of ensuring the removal of the existing crossover, the renewal of the foot and the cycle path and the yellow lines, or a financial contribution towards construction logistics plan monitoring is necessary, directly related to the development or fairly and reasonably related in scale and kind to the development.
48. However, for the reasons set out above, I find that a planning obligation to ensure that the development would be car-free would be necessary to make the development acceptable. No such planning obligation is before me.

Other Matters

49. The appeal site may be within an accessible location, with a range of services and facilities nearby whilst it may be within a location with a low probability of flooding. The appeal site may also not have any particular land designation or designated sensitivity, nor would the proposed development affect heritage assets. The proposed development may also provide appropriate cycle parking, incorporate measures to deter crime and not contribute toward air pollution. 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.
50. It is submitted to me that the proposed development would incorporate sustainable design features including the provision of photovoltaic panels. However, energy efficiency measures are required in order to comply with Policy CS4 of the CS, Policies DM10 and DM11 of the DMP document and Policies D3 and D6 of the LP. This is, therefore, a neutral factor in my determination.
51. Planning permission has previously been granted for residential development at the site (application reference 190208). 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.

52. It is also submitted to me that the mix of flats proposed is appropriate and would better serve a range of prospective occupiers than the scheme previously granted planning permission, whilst the appearance of the appeal proposals has taken more design cues from the local area. It may also be the case that the appeal proposals have sought to rectify other elements of the previously approved development which, the appellant submits, were somewhat deficient. Even so, these design revisions are insufficient to outweigh the harm I have identified in the main issues. Consequently, the previously approved development at the site is of limited weight in my decision.
53. In the main issues I have identified that the proposed development would harm the living conditions of existing neighbouring occupiers and would fail to provide adequate living conditions for its future occupiers. Consequently, I cannot agree with the appellant that the proposed development constitutes the optimum capacity for the site as required by Policies D3 and GG2 of the LP. Policy DM2 of the DMP document seeks to prevent the loss of existing housing and, therefore, I find that it is largely irrelevant to the appeal proposals.
54. A CIL contribution may be derived from the development. However, I am mindful that the Planning Practice Guidance states that it would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body and it is not clear to me how, in this case, the CIL contribution may be utilised. Regardless, such a contribution would not outweigh the harm I have identified in the main issues nor make the development acceptable in planning terms.
55. Responses from local residents 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

56. 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.
57. 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 Framework including that within paragraphs 60, 69 and 120.
58. The appellant submits that an improvement to the existing situation in respect of surface water run-off would result from the development. A biodiversity net gain may also be achieved due to the landscaping scheme proposed. These represent further benefits of the proposed development.
59. On the other hand, in the main issues I have identified that the effect of the proposed development upon the living conditions of the occupiers of 29, 30 and 31 Rennes Road would be unacceptable and appropriate living conditions

would not be provided for the future occupiers of the proposed flats. The absence of a planning obligation so as to ensure that the development would be car-free also weighs against the appeal proposals.

60. 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.
61. Therefore, although I have not identified harm in each of my main issues 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