



Appeal Decision

Site visit made on 18 April 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/W5780/W/22/3308684 964 Eastern Avenue, Ilford IG2 7JD

- 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 Jay Sains of Oakland Estates against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 2046/22, dated 17 June 2022, was refused by notice dated 26 August 2022.
 - The development proposed is described as: "Demolish existing storage/warehouse unit to rear. Change of use of part ground floor (rear) from Retail to Residential. Loft conversion with a rear dormer to enlarge existing flat. Two storey rear extension. 2x new one bedroom flats. Three front rooflights. Alterations to fenestrations. Associated waste and cycle store".
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the appeal form. I have used that wording rather than that from the planning application form as it provides a more comprehensive description of the proposal; as the same wording was used on the Council's decision notice the description also reflects the scheme as it was considered by the Council.
3. The Government published a revised National Planning Policy Framework ("the Framework") on 5 September 2023, replacing the version published in July 2021. The amendments made did not have any bearing on the issues in this appeal, and it was therefore not necessary to seek comments from the main parties on the updated Framework. Where I have referred to specific paragraphs of the Framework, the numbering used is that of the September 2023 version.

Main Issues

4. The main issues are:
 - Whether the proposed development would provide acceptable living conditions for future occupiers, with particular reference to internal living space, privacy, outlook, daylight and sunlight;

- The effect of the proposed development on living conditions for occupiers of the neighbouring property at No 962 Eastern Avenue, with particular regard to outlook and a sense of enclosure; and
- Whether the development would make acceptable and appropriate storage arrangements for commercial refuse.

Reasons

5. The appeal relates to a two-storey terraced property on the south side of Eastern Avenue. There is a commercial unit on the ground floor (with a separate storage unit at the rear) and a self-contained flat on the first floor above; the arrangement appears typical of the parade of similar units of which it is part. The immediate surroundings are predominantly residential.
6. The proposed development is the demolition of the rear storage unit, and the erection of a rear extension (along with alterations to the ground floor) to create a smaller retained commercial unit, a one-bedroom flat at the front of the first floor and within the converted loft space (Flat 1), and two studio flats (one at the rear of each of the ground and first floors – Flats 2 and 3 respectively). The scheme would also include a cycle and refuse storage unit at the rear.

Living conditions – appeal property

7. Policy LP29 of the 2018 Redbridge Local Plan (“the RLP”) and Policy D6 of the London Plan 2021 apply space standards for new residential development. Of particular relevance to this appeal are the minimum gross internal floor area (GIA) requirements of 58m² for a two-person one-bedroom dwelling over two floors, and 37m² for a one-person one-bedroom or studio dwelling, as well as the requirement that at least 75 percent of the dwelling has a minimum floor-to-ceiling height of 2.5m, and the provision that areas with headroom of less than 1.5m are not counted within the GIA of the dwelling unless used solely for storage. These requirements reflect the Nationally Described Space Standard (“the NDSS”)¹, other than the 2.5m floor-to-ceiling requirement which is set by the London Plan².
8. Within Flat 2, the ceiling height would be 2.4m in the bedroom/living room and 2.2m within the bathroom and the kitchen/dining area. It would therefore not comply with the 2.5m/75 percent requirement set out in the development plan. Flat 3 would be set under the pitched roof of the rear extension; as a consequence, by the Council’s calculation only 32.8 percent of that unit would have a floor to ceiling height of at least 2.5m. Furthermore, excluding the 2.37m² of the flat where the floor-to-ceiling height would be less than 1.5m would result in Flat 3 having a GIA of 33m². It would therefore fall short both in terms of the total living space and ceiling height requirements set out in the development plan.
9. The appellant suggests that the floor-to-ceiling height would exceed 2.3m across more than 75 percent of both Flats 2 and 3, and thus the requirement of the NDSS (rather than the development plan) would at least be complied with. However, the Council calculated that only 48.8 percent of Flat 3 would have a

¹ *Technical housing standards – nationally described space standard*, Department for Communities and Local Government 2015

² The NDSS requirement is for a minimum of 2.3m across 75 percent of the dwelling.

ceiling height of 2.3m or greater, a figure which has not been substantively refuted; even if I were therefore to accept that the lower standard of the NDSS should be applied, the evidence before me indicates that Flat 3 would still fall short.

10. Turning to the parts of Flat 3 where the ceiling height would be below 1.5m, the appellant suggests that "these would be utilised for storage and for work surfaces in the kitchen". However, the submitted drawings indicate that there would be likely to be areas along both sides of Flat 3 where headroom would be very limited; these would not just be storage space but would include parts of the living room/bedroom area. I accept the appellant's proposition that areas with limited headroom *can* still be used for some purposes within living accommodation; however, this does not amount to a substantive justification for allowing a new dwelling to be built which falls below the minimum requirements of the NDSS and the development plan.
11. Proposed Flat 1 would have floor-to-ceiling heights of 2.4m on the first floor and 2.3m under a dormer roof within the rear part of the loft conversion. The Council considers that these ceiling heights are acceptable given that Flat 1 would be created within the existing building envelope; for the same reason, I agree.
12. Flat 2 would have a single window, on the rear elevation of the proposed extension. This would offer a limited and poor outlook onto the small rear courtyard providing shared access to Flats 2 and 3 as well as the cycle/bin storage room serving all three flats. The communal use of the courtyard area would also have the effect of reducing privacy for the occupier of Flat 2, as people entering or leaving the other two flats at any time of day or night would pass by the living room/bedroom window at very close range.
13. The rear window of Flat 2 would face approximately south-east, and so (notwithstanding the effect of any planting outside) may well be likely to receive unobstructed daylight and sunlight for much of the day. However, Flat 2 would be relatively deep internally (around 8.6m, by the Council's measurement), and it seems likely that the raised kitchen/dining area would therefore receive limited daylight from the window. No daylight or sunlight study has been provided, and I cannot therefore be certain that there would be adequate daylight within the key living and cooking spaces of Flat 2.
14. I note that the appellant suggests that planting outside the window of Flat 2, as shown on the submitted drawings, would lead to increased privacy within. In my view though, this this would be unlikely to dramatically improve the situation in terms of privacy or outlook for the occupier of Flat 2, unless the amount and density of planting was such that there would be a knock-on adverse effect on daylight reaching the window.
15. I conclude that, because of the limited headroom within Flat 2 and parts of Flat 3, and the poor outlook, privacy and daylight within Flat 2, the proposed development would not provide acceptable living conditions for future occupiers. The development would therefore conflict with Policy LP29 of the RLP and with Policy D6 of the London Plan 2021. Together, these policies seek to ensure that residential development provides a high standard of accommodation for future occupiers, including through providing adequate living space (including headroom), acceptable outlook and privacy, and adequate levels of daylight and sunlight.

Living conditions – neighbouring property

16. There is a first-floor window on the rear elevation of No 962 to the west of the appeal site. Although I do not know the precise nature of the room it serves, the evidence put before me suggests that it is a habitable room, most probably either a living room or a bedroom. The proposed rear extension would be built up to the shared boundary with No 962 at first floor level, and so would be likely to lead to some loss of outlook from, and an increased sense of enclosure within, the nearest first floor room at No 962.
17. No 962 has previously been extended at the rear; the extension has a pitched roof, with a hipped section immediately in front of the affected first floor rear window. The Council acknowledges that the rear first floor room at No 962 therefore already has a somewhat limited outlook. I note also the appellant's argument that, because of the existing rear extension at No 962, any further loss of outlook resulting from the appeal development would not cause unacceptable harm to neighbours' living conditions. However, the proposed rear extension would have what appears to be a relatively high parapet wall along the shared boundary, and it would project around 8.85m beyond the existing rear elevation; it would therefore be a substantial structure, and the possibility remains that its bulk and siting would have a significant impact on outlook and enclosure at the neighbouring property. That the neighbour's existing window may already have a limited outlook is not in itself a justification for allowing further unacceptable harm.
18. The rear extensions already in place on the appeal property and its neighbour mean that it was not possible for me to get a clear view of the relevant window at No 962 during my site visit. The planning application drawings and appeal evidence do not contain sufficient information (such as, for example, drawings of horizontal and vertical sightlines from the affected room at No 962) to demonstrate that the proposed extension would not have significant adverse effects in terms either of outlook or a sense of enclosure.
19. As things stand, I therefore cannot be satisfied that the proposed development would not cause significant harm to living conditions for occupiers of the neighbouring property at No 962 Eastern Avenue, with particular regard to outlook and a sense of enclosure. The proposal therefore does not comply with the requirements of Policy LP26 of the RLP which seeks to promote high quality design by, among other things, ensuring that development does not have an adverse impact on the amenity of neighbouring occupiers, including in relation to outlook.
20. The Council's decision notice also indicated conflict on this matter with Policy LP29 of the RLP; that policy addresses matters of external amenity space and internal space standards which do not, on my reading, directly relate to this main issue. I therefore find no conflict with Policy LP29 on this matter, though this does not alter my overall conclusion.

Storage of refuse

21. Policy LP26 of the RLP seeks to promote high quality design and, among other things, requires development to provide appropriate facilities for refuse, recycling and servicing. Policy LP24 requires that "waste facilities" (which both main parties in this case have interpreted as including areas for the storage of

- refuse) should be fully enclosed so as to adequately mitigate their impact on amenity, air quality, and noise.
22. The appeal scheme would include an enclosed bin and recycling storage building within the rear yard and, while the Council's officer report expressed uncertainty about whether that was intended to serve the development as a whole, it is apparent from the appellant's statement that it would serve only the three residential units. The appellant stated that waste receptacles for the commercial unit "could be positioned within the shop unit [and] easily be moved to a collection point at the front of the property at the boundary nearest the highway".
23. The appellant has commented that the commercial unit previously operated as a beauty salon which "did not generate large amounts of waste that could not be accommodated within the confines of the unit", a point which I accept. I note also that the submitted Design and Access Statement indicates that the retained commercial unit would be used as an estate agent and/or other professional service office space and that, on the face of it, this particular use may also be unlikely to produce large amounts of commercial waste. However, Class E allows for a wide range of other uses, some of which would have the potential to generate much larger quantities of commercial waste. In this context, I do not think that arrangements which would be entirely dependent on the internal storage of commercial waste in a relatively small unit until it was due to be collected, and its subsequent timely removal to the front pavement, would be appropriate or acceptable. The proposed internal layout of the property, and the distance which anyone seeking to take rubbish from the shop unit to the rear area would need to walk around the perimeter of the block, mean that any such arrangements would be inconvenient and liable to abuse; I therefore do not consider that this is a matter which could satisfactorily be addressed by the use of a condition requiring the submission and approval of further details.
24. I therefore conclude that the proposed development would not make acceptable and appropriate storage arrangements for commercial refuse. It would therefore conflict with Policies LP24 and LP26 of the RLP, the principle relevant requirements of which I have set out above.

Other Matters

25. The appeal site is located within a zone of influence for likely impacts arising from residential development on the Epping Forest Special Area of Conservation ("SAC"). The Council has produced the Epping Forest Special Area of Conservation Mitigation Strategy which requires a per-dwelling contribution along with a monitoring fee. The Council also has a standard "Epping Forest SAC Mitigation Payment Letter" outlining details of the required mitigation payment if the development is approved, a copy of which was provided to me.
26. In his appeal evidence, the appellant indicated a willingness to enter into a legal obligation which would secure the SAC mitigation payment. However, I have not been provided either with a completed obligation which would secure the payment, or evidence that the required amount has already been paid to the Council in accordance with the relevant guidance. While I am conscious of the requirement to undertake an 'Appropriate Assessment' of the effects of the development on this designated site, as I am dismissing this appeal for other

substantive reasons I have not considered this matter any further, as it could not alter my overall decision.

Planning Balance and Conclusion

27. The Council's evidence acknowledged that its Housing Delivery Test ("HDT") results showed that it had met only 68% of its housing requirement over the three-year period to 2021, and that consequently it had been required to produce an action plan. It also went on to comment that, on the adoption of the London Plan 2021, its housing delivery target had been increased further, making it more difficult to meet housing targets in the short and medium term.
28. In line with Footnote 8 of the Framework, I therefore consider that the most important policies for determining the appeal should be considered out of date, and the presumption in favour of sustainable development set out in Paragraph 11d) of the Framework applies. As such, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
29. The proposed development would provide a net increase of two new dwellings, on a site close to shops and other services, and where it appears likely that development could be brought forward quickly. Given the very small scale of the scheme, this would represent a modest social and economic benefit. The Council had no "in principle" objections to the proposal, and considered that the development would be acceptable in terms of its effects on the character and appearance of the local area; I do not disagree on these points.
30. However, the proposed scheme would not provide acceptable living conditions for future occupiers, and would potentially also have an adverse effect on living conditions for neighbouring occupiers. As such, there would be conflict with the provisions of Chapter 12 of the Framework which seek to achieve well-designed places; in particular the proposal would not accord with the requirements of Paragraph 130 which, among other things, seek to ensure that development provides a high standard of amenity for existing and future users.
31. The failure to make acceptable arrangements for the storage and collection of commercial is a further shortcoming of the proposal. In this respect it conflicts with the requirements of the Framework, again set out in Paragraph 130, that development should function well and add to the overall quality of the area.
32. Overall, I consider that the harm from the development significantly and demonstrably outweighs the benefits when assessed against the Framework taken as a whole. The proposal would not amount to sustainable development in the terms set out in the Framework. The appeal is therefore dismissed.

M Cryan

Inspector