



Appeal Decision

Site visit made on 2 October 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2023

Appeal Ref: APP/U5930/W/23/3316503

Rear of 249 Chingford Mount Road, Chingford E4 8LP

- 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 Brian Sovitch against the decision of Waltham Forest London Borough Council.
 - The application Ref 203055, dated 1 October 2020, was refused by notice dated 16 August 2022.
 - The development proposed is demolition of existing commercial building and construction of a two storey building to provide 4 x 2-bedroom and 1 x 3-bedroom single dwelling terrace houses with associated soft and hard landscaping, refuse and recycling, cycle storages.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Brian Sovitch against Waltham Forest London Borough Council. That application is the subject of a separate Decision.

Preliminary Matter

3. A Planning Obligation by way of Unilateral Undertaking (the legal agreement) is before me. This is dated 11 October 2023 and signed by the site's owners. The legal agreement, which the appellant has liaised with Council upon, secures the carrying out of highway works, to include the removal and renewal of existing crossovers, pursuant to an agreement to be entered into under Section 278 of the Highways Act 1980. It also secures contributions towards: Strategic Access Management and Monitoring Strategies in the interests of mitigating the scheme's impact upon the Epping Forest Special Area of Conservation (the SAC); monitoring construction logistics; improving sustainable modes of transport; and monitoring to secure compliance with the legal agreement. I shall return to the legal agreement later.

Main Issues

4. The main issues are:
 - Whether safe and fit-for-purpose access to the site would be provided, including consideration of whether acceptable waste collection arrangements have been demonstrated; and
 - The effect upon existing trees.

Reasons

Access arrangements, including waste storage and collection

5. The site currently contains a detached warehouse and surrounding area of external yard that is setback from the public highway. It is accessed via a shared private access road (the shared access) which connects to Albert Avenue (the Avenue) to the south and which the appellant has a private right of way over. The shared access serves a range of different properties including dwellings, flats, and commercial businesses. It is of narrow specification and could not be parked/waited upon by a vehicle of standard size without obstructing vehicular access.
6. None of the five dwellings that are proposed would be served by private on-site parking. Indeed, the proposed on-site layout does not accommodate vehicular access in any capacity. It is instead the appellant's intention that the shared access be navigated by future occupiers on foot or by cycle.
7. A residential development of five dwellings would realistically generate a not insignificant number of comings and goings and would thus intensify the shared access's use. Nevertheless, as the route does not offer servicing opportunities for an especially high number of commercial enterprises and is already utilised on a shared basis with widespread potential for movements on foot to occur along it, I do not find the principle of obtaining pedestrian access to the proposed development to be unacceptable.
8. However, to my mind, an important factor in this case is the setback nature of the site and the distances that would be involved to reach the proposed dwellings via the shared access from the Avenue. This physical relationship does not promote access on foot or by cycle to be a wholly realistic option for all trips to and from the entrance to the site, including those initiated by visitors/external parties for the purposes of undertaking deliveries or collections, and especially if involving the transportation of large, heavy, or numerous items.
9. It is also relevant that parking along the Avenue can evidently be often in high demand, meaning that a convenient stopping/waiting point outside of the shared access could not always be guaranteed. Any review or renewal of existing road markings secured via the legal agreement would not, based on the limited details before me, provide satisfactory assurances of alternative circumstances to this arising post development.
10. I acknowledge that various private rights of access avail and that associated requirements are enshrined in private property rights for the shared access to remain free and clear. However, whilst these factors remain relevant material considerations, it remains inevitable that the proposal would, due in-part to the particular site access arrangements that would apply and the number of dwellings that are proposed, lead to the shared access being used on a recurrent basis by visiting vehicles. Indeed, to my mind, the erection of a sign to declare that the shared access shall remain unobstructed and subject to potential enforcement would not act as a sufficient deterrent. These findings are problematic because the shared access, in-part owing to its narrow specification, lack of turning opportunities, and range of potential users (including pedestrians), does not lend itself to suitably and safely

- accommodating additional moving, waiting or parked vehicles associated to the proposal.
11. I accept that, given the intention to install a hydrant and sprinklers, there would be no necessity for a fire tender to enter the site or the shared access. Further, only in exceptional circumstances could it be fairly envisaged that any other emergency service vehicle would be required to navigate the shared access. However, these findings do not demonstrate safe and fit-for purpose access arrangements when assessed in overall terms.
 12. I acknowledge the appellant's reference to past commercial uses of the site that generated vehicular movements. However, the site as currently laid out, offers vehicular access, parking and turning opportunities, which would no longer be the case should the appeal proposal be implemented. Moreover, when noting the high potential that would prevail for pedestrian movements and vehicular manoeuvres to take place concurrently within what is a heavily constrained space, safe and fit-for-purpose access to the site would not be provided.
 13. My attention has been drawn to other schemes where planning permission has been granted for residential development upon sites setback from the highway. However, with respect to a site at 124-126 Vicarage Road, Leyton, it would appear that a directly comparable shared access was not under consideration. With respect to 100-102 Manor Road, Leyton, I'm led to understand that parking within the site is possible such that it is again difficult to draw direct parallels. Limited details have been provided with respect to sites at 20 Coopers Lane and Land Rear of 37 Wolsey Avenue such that it has not been clearly demonstrated that comparable shared access arrangements applied in either case. As such, these other schemes are of limited relevance to my considerations. In any event, I must consider the proposal that is before me upon its own individual planning merits.
 14. Turning to waste collection matters specifically, a storage compound is proposed at the eastern end of the site adjacent to the shared access. Whilst some form of additional storage provision is illustrated within the shared access upon the Proposed Site Plan, this is not contained within the site's red line, and the appellant has confirmed this does not comprise part of the proposal.
 15. The Council's Waste and Recycling Guidance for Developers (June 2019) (the Guidance) has been brought to my attention. This seeks to provide basic advice on the storage and collection requirements for waste and recyclable material and sets out various recommended maximum carry/move distances for residents and waste collection crews, which the proposal would fail to fully adhere with. Even so, the position of the waste storage compound would promote waste being dropped by residents when exiting the site. Further, the Guidance indicates that if the proposed collection method does not fit with the Council's collection methods the relevant developer will need to arrange for private collections. This is the approach sought by the appellant and, notwithstanding the inability to adhere to maximum carry/move distances set out in the Guidance, there is no clear reason for me to resist the principle of this approach.
 16. Without prejudice to my finding that, in general terms, safe and fit-for-purpose access to the site would not be provided, a collection agreement (or similar) would allow for the precise details of collection by a privately commissioned

team to be secured. Such an approach, which could secure details such as the type of vehicle and/or personnel to be utilised, the timing of visits, and the precise location and method of collections, would hold the realistic potential to ensure no material detriment to highway and pedestrian safety.

17. However, it must also be noted that a statutory duty to collect waste/recycling from domestic households applies to the Council. Indeed, it would be unusual for alternative private arrangements to be put in place for the collection of domestic waste and a degree of caution should rightfully be applied when considering the merits of such an approach. This is particularly when noting that the same statutory duty that would apply to the Council would not apply to any private collection team.
18. A collection agreement (or similar) is not secured via the legal agreement. This is a matter of importance because a planning condition, however drafted, could not in my judgement provide the necessary degree of certainty that private waste collections from the site would continue in perpetuity in the event the appeal be successful and the scheme be implemented. This is a shortcoming of the scheme given the specific site circumstances to hand and the clear non-compliance that avails with typically applied Council waste collection standards.
19. I note that the appellant has provided examples of where waste management conditions have been applied by the Council. However, the scheme referred to at 4-10 Forest Road, Walthamstow is evidently of non-comparable scale to the proposal that is before me and, within the document that was approved, a clear aim to take advantage of Council collections was stated. To the contrary, at the appeal site, based on the evidence before me, no such option is realistically available. With respect to Juniper House, Walthamstow, whilst a managed solution was set out, this involved collections of residential waste being undertaken by Council collection vehicles. These other examples are thus of limited relevance.
20. For the above reasons, safe and fit-for-purpose access to the site would not be provided, and nor have acceptable waste collection arrangements been satisfactorily demonstrated. The proposal conflicts with Policies CS2, CS13 and CS15 of the Waltham Forest Local Plan Core Strategy (March 2012) (the CS), Policies DM23, DM29, DM30 and DM32 of the Local Plan Development Management Policies (October 2013) (the DMP), and the guidance contained within the Urban Design Supplementary Planning Document (2010) in so far as these policies and guidance promote high quality design, the development of safe and healthy places, and that regard is had to the location of facilities for the storage, collection and disposal of refuse so as to provide safe and convenient access for occupants/users and satisfactory access for refuse collection vehicles and operatives.
21. Whilst Policies DM5 and DM7 of the DMP are referenced in the Council's first reason for refusing planning permission, these relate to matters of housing mix and space standards respectively and are thus of little relevance to this main issue of the appeal.

Existing trees

22. The site sits in proximity to established trees located just beyond its boundaries. The submitted Arboricultural Report dated 15 May 2020 (the Report) identifies each surveyed tree to have low amenity value. Consistent

with this finding, upon inspection I experienced no adjacent tree to be especially prominent or significantly sized and each to make a somewhat modest contribution to the character and appearance of the locality. Even so, I observed the close by trees to provide some positive greening effects within the dense urban environment in question.

23. Whilst the Report identifies that the proposal would necessitate minor intrusions of built development inside the calculated root protection areas of two trees, such intrusions would not realistically undermine tree health or longevity. Further, as was apparent upon inspection, meaningful degrees of separation would avail at crown level. As such, even when noting some potential for trees to cast shade upon the site during certain daytime hours and the potential for growth over time, it is my judgement that the proposal would be unlikely to lead to any significant pressures from future occupiers to prune, reduce or remove the relevant trees in the future.
24. For the above reasons, subject to the adoption of sensitive construction methods and the implementation of tree protection measures during the construction phase, the proposal would have an acceptable effect upon existing trees. The scheme satisfactorily accords with Policy CS5 of the CS and Policy DM35 of the DMP in so far as these policies set out that the loss or damage of trees should be avoided where possible.

Other Matters

25. I have noted objections/concerns raised by interested parties with respect to matters including the effect upon on-street parking supply, alleged loss of privacy, possible light pollution, potential property damage, security implications, and suggested drainage issues. However, as I have found the proposal to be unacceptable for other reasons, it is unnecessary for me to explore these matters further here.
26. The site lies within the Zone of Influence of the SAC. The Conservation of Habitats and Species Regulations 2017 (as amended) require that, where a project is likely to have a significant effect on (a) European site(s) (either alone or in combination with other plans or projects), the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant conservation objectives. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to undertake an appropriate assessment. For the avoidance of doubt, even if I had done so and a positive outcome had ensued because of the relevant contribution secured via the legal agreement, it would not have affected my overall conclusions on this appeal. Moreover, the various contributions/works secured via the legal agreement are intended to mitigate the proposal's effects and, on this basis, do not typically attract positive weight in the planning balance.

Planning Balance

27. In terms of the scheme's benefits, the proposal would deliver five additional dwellings on previously developed land in a well-connected location, and the National Planning Policy Framework reaffirms the Government's objectives of significantly boosting the supply of homes and making an effective use of land. The scheme would also generate jobs and investment during the construction phase, as well as expenditure in the local economy and support for local

community facilities in the area once occupied. It is also the case that the legal agreement secures highway works that would provide some minor publicly accessible improvements to the local highway network. There are thus scheme benefits that, in cumulative terms, attract considerable weight.

28. However, in my judgement, the scheme's benefits do not outweigh the significant harm and associated policy conflicts that I have identified by virtue of safe and fit-for-purpose access arrangements and acceptable waste collection arrangements having not been demonstrated. The proposal conflicts with the development plan when read as a whole and material considerations do not lead me to a decision otherwise.

Conclusion

29. Whilst I have found that the proposal would have an acceptable effect upon existing trees, I have identified harm by virtue of safe and fit-for-purpose access to the site as well as acceptable waste collection arrangements having not been suitably demonstrated. This harm is the overriding consideration in this case. As such, the appeal is dismissed.

Andrew Smith

INSPECTOR