



# Appeal Decision

Site visit made on 11 October 2023

**by H Jones BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 October 2023**

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**Appeal Ref: APP/G5750/W/23/3315308**

**118 High Street South, East Ham, London E6 3RL**

- 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 Raithatha against the decision of the Council of the London Borough of Newham.
  - The application Ref 21/01849/FUL, dated 23 July 2021, was refused by notice dated 20 December 2022.
  - The development proposed was originally described as "Demolition of an existing mechanics garage with 1 x 3 bedroom flat and construction of a new building to create 5 x 1 bedroom, 3 x 2 bedroom and 1 x 3 bedroom."
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## Decision

1. The appeal is dismissed.

## Applications for costs

2. An application for costs was made by Mr Raithatha against the Council of the London Borough of Newham. This is the subject of a separate Decision.

## Preliminary Matters

3. The description of development in the banner heading above is taken from the application form. However, it is clear from the plans before me for my determination that the development also proposed a commercial unit, whilst the number of flats and, the number of bedrooms within them, is not accurately reflected in this original description.
4. The changes brought about by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 have revoked the former use class A3 (restaurants and cafes). Furthermore, uses which previously fell under class A5 (hot food takeaways) are now sui generis.
5. Within the evidence that is before me, the submitted application form identifies an A5 hot food takeaway as a part of the proposal. The plans which show the commercial unit, clearly reference both the A3 and A5 use classes. The submitted Design and Access Statement includes references to A5 usage. I have no substantive evidence before me that a commercial unit which would sell hot food for consumption mostly undertaken off the premises, is not proposed. In such circumstances, I deal with this appeal on the basis that a hot food takeaway forms a part of the appeal proposals.

## **Main Issues**

6. The main issues are:

- The effects of the proposed development upon public health, having regard to hot food takeaways in the area and the proximity of the appeal site to schools;
- The effects of the proposed development upon the character and appearance of the area;
- Whether appropriate living conditions would be provided for the future occupiers of the proposed flats;
- The effects of the proposed development upon the living conditions of the occupiers of neighbouring properties; and
- Whether appropriate provision would be made for refuse and recycling.

## **Reasons**

### *Public health*

7. The appeal site is located within an area of quite mixed character. There are many residential properties but, High Street South also contains commercial premises. Reflective of this, the host property contains a car garage business within its lower floors with residential accommodation above a part of this.
8. The justification to Policy SP9 of the Newham Local Plan 2018 (NLP) includes Figure 3.6 which identifies hot food takeaway units and hotspots. On High Street South and, in the vicinity of the appeal site, 3 such units are shown. During my visit, I noted within the parade of commercial properties just to the north of the appeal site there were 3 hot food takeaway premises. There was another unit which it appeared to me could also be a hot food takeaway, but I was given the strong impression from its exterior that it could be vacant.
9. Amongst other matters, Policy SP9 sets out that in order to avoid over-concentrations of hot food takeaways, no more than 3 such premises be within 400m of each other. Even if I were to discount the potentially vacant unit, the proposal would provide for a further hot food takeaway and 4 hot food takeaway premises would be within 400m of each other. Given the content and operation of Policy SP9, on this basis alone, this would represent an over-concentration of such uses.
10. Furthermore, 2 primary schools are also located close-by to the appeal site, particularly Vicarage Primary School. I find it very likely that the entrances and exits of this school are within 400m of the site and I have no substantive evidence before me that this is not the case. This would bring the proposed development into conflict with criterion d) of Policy E9 of the London Plan 2021 (LP) which seeks to prevent hot food takeaways in such close proximity to schools.
11. No mechanisms have been put to me that would ensure that the food that would be sold from the hot food takeaway would be of a healthier nature. If I were to allow the appeal and grant planning permission, the typical forms of high calorie takeaway foods which contribute to unhealthy food environments could be sold. In such circumstances, I can only attribute very limited weight to

the appellant's intentions that the unit would sell healthy food and would seek to improve eating habits in the area.

12. Therefore, in the proposal, a further premises which could sell unhealthy, energy-dense food would be delivered. Given the number of takeaways nearby, it would lead to a proliferation of such uses within the area and be positioned very close to a primary school. In so doing, the proposal would harmfully contribute to an unhealthy food environment in the locality to the detriment of public health.
13. The proposed development would be contrary to Policies E9 and GG3 of the LP and Policies SP1, SP2 and SP9 of the NLP. These policies seek to ensure successful places, promote more active and healthy lives for Londoners, seek to create healthy food environments including through the avoidance of over-concentrations of takeaway uses and placing restrictions upon their proximity to schools. The proposal would also conflict with advice at paragraph 92 of the National Planning Policy Framework (the Framework) which states that decisions should aim to achieve healthy places and support healthy lifestyles.

#### *Character and appearance*

14. Although the local area does contain a mixture of properties, part of its prevailing character stems from the number of traditionally designed terraced properties which share features of a like design. These properties are 2 storey, have pitched roofs with generally consistent eaves and roof ridge heights. To their front elevations, these properties incorporate bay windows and feature gable projections, together with ornate architectural detailing. These properties exhibit a strength of uniformity which contributes positively to the character and appearance of the area. The host property includes these features.
15. In the proposal, the existing traditionally designed terraced property inclusive of its architectural features and ornate detailing would be demolished. Although revisions made to the design of the proposed building included a reduction in its size, the top of its flat roof would, nevertheless be incongruously higher than the consistent roof ridges of the adjacent terraces. Where it would front onto both High Street South and Masterman Road the second floor of the proposed building would significantly extend beyond the roof plane of the adjacent roof slopes. In combination with the windows, doors and balconies proposed at this level, overly bulky and complex elevations would result which would appear harmfully at odds with the 2 storey terraces adjacent and their simple roofscapes. This would result despite the design incorporating some stepped and recessed elements.
16. No plan depicting the appearance of the east facing elevation of that part of the building which would contain Flats 1-3 is before me. Without it, the appearance of this part of the building is not clear to me. I cannot therefore conclude that this part of the development would deliver high quality design. It may be the case that this elevation could have been produced had the Council corresponded further on this matter. Nevertheless, the plan is not before me and, I must determine the appeal on its merits with regard to the plans and evidence submitted.
17. For these reasons alone, I find that the proposed development would result in unacceptably harmful effects upon the character and appearance of the area. In coming to this view, I acknowledge that the appeal site contains no listed

buildings nor is it within a conservation area. The use of appropriate building materials and an approach to fenestration that takes design cues from nearby developments would not off-set the harm I have identified.

18. I have also had regard to other redevelopments in the area, including those identified by the appellant as 115 High Street South (No 115) and The Brick Yard. However, The Brick Yard is located more within the centre of East Ham where there is a greater concentration of larger and more diverse buildings than is found in the surroundings of the appeal site. No 115 is much closer to the appeal site and the building at that site, I accept, is considerably larger than the terraced properties beside it. Even so, that development fills the entirety of a plot between 2 side streets. It does not adjoin a terraced row fronting onto High Street South as would be the case with the proposed building the subject of the appeal. No 115 is also opposite a park, whereas the appeal site is opposite more 2 storey terraced properties. Given these factors, there are clear differences between the setting of the appeal site and the settings of these other sites and, different effects would be wrought by the proposal. Accordingly, such other developments do not weigh, to any meaningful extent, in favour of the proposed development.
19. For the above reasons, the proposed development would be contrary to Policies D3, D4 and D8 of the LP and Policies S6, SP1, SP3 and SP8 of the NLP. Together, these policies require developments to be well designed and meet relevant local plan design requirements including achieving place curation, integration into the street scene, the enhancement of local context and by delivering buildings that positively respond to local distinctiveness. I also find that the proposed development would fail to comply with advice contained within the Framework, including that at paragraph 130, which requires development to be visually attractive and sympathetic to local character.
20. The Council's fourth refusal reason also refers to Policy D1 of the LP and Policy SP2 of the NLP. These policies principally focus upon the undertaking of area assessments, the preparation of development plans for London boroughs and achieving healthy neighbourhoods. Consequently, I find that they are not particularly relevant to this main issue.

#### *The living conditions of future occupiers*

21. The bedrooms proposed within Flat 1 would each be served by a single window only. In the absence of a drawing depicting the east facing elevation, I cannot be certain of the precise size of these windows. The plans also show that a boundary fence would be positioned closely in front of these bedroom windows. The proposed ground floor plan identifies that this would be 2m in height. This would create a strong sense of enclosure. The 3 storey scale of the proposed building itself and the proximity of existing adjacent buildings would add further to the enclosure of the Flat 1 bedrooms and affect light levels. Given this combination of factors, I cannot conclude that the occupiers of these bedrooms would be provided with adequate levels of outlook or that they would receive adequate light.
22. The proposed ground floor Flat 4 would only be served by windows on its Masterman Road facing elevation. These windows would include those serving the bulk of the main living accommodation within the flat - the open plan lounge, dining and kitchen area. With nearby High Street South containing its many commercial properties and, Masterman Road itself being quite long and

lined by many terraced houses, the footfall that would pass the proposed windows would be quite high. Therefore, pedestrians would frequently pass the Flat 4 windows and, at such close proximity, the views into the flat would be invasive. Given this, the occupiers of Flat 4 would be provided with inadequate levels of privacy.

23. The plans submitted depicting parts of the 3 High Street South (No 3) development indicate to me that those ground floor flats are served by windows set behind landscaped spaces and in several elevations. This is very different from the arrangements that would be provided for the occupiers of Flat 4. I find that the levels of privacy which the occupiers of Flat 4 would receive would be divergent from that which prevails in the area, owing to so many properties being set back from the pavement behind a front yard.
24. Although for the above reasons the occupiers of Flat 4 would not be provided with adequate levels of privacy, I have no substantive evidence before me that the flat would be particularly vulnerable to crime.
25. Amongst other matters, Policy D6 of the LP sets out private internal and private outside space standards which housing developments are required to meet. These standards are generally reflective of those within the Technical Housing Standards – Nationally Described Space Standard.
26. I accept that the majority of the relevant private internal space standards would be achieved. However, the plans identify that Bedroom 2 within proposed Flat 2 would have a floorspace of 11.9m<sup>2</sup>. It would thereby constitute a double bedroom. The space standards set out that double bedrooms must be at least 2.55m wide. The room would be quite considerably narrower than this. Even if I were to accept that the room was for single occupancy, it has not been shown to me that most of the room would be 2.15m wide either. Furthermore, the space standards within Policy D6 of the LP are minimum requirements and, their exceedance is encouraged. It is suggested to me that a change could have been made to the design to increase the room's width but that it would not have complied with the relevant building regulations. Regardless of the reasons, no revised design is before me and, I must determine the appeal on the basis of the submitted plans.
27. Each proposed flat, including Flat 2 would be served by private outside space which would meet the requirements of Policy D6. Public open spaces are also nearby to the appeal site. However, these matters do not nullify the requirement for acceptable internal accommodation to also be provided. Internal and external spaces serve different purposes and make different contributions to the quality of living conditions. Therefore, that Flat 2 would be served by acceptable private outside space and would be in close proximity to public open space does not override the harm that would result from the inadequacies of the bedroom accommodation.
28. For these key reasons the proposed development would not provide appropriate living conditions for the future occupiers of flats within the development. The Council refer to some other points in respect of the living conditions of the future occupiers of the proposed flats and this includes the impacts of a proposed flue and other matters in respect of privacy and outlook, issues which the appellant has also referred. However, the matters I have already addressed above in detail alone constitute unacceptable harms and it is not necessary for me to consider these other matters further.

29. The proposed development would be contrary to Policies GG4, D3, D4 and D6 of the LP together with Policies S1, S6, SP1, SP2, SP3, SP8 and H1 of the NLP. These policies seek to create good quality homes with adequately sized rooms and functional layouts and, seek to ensure that appropriate living conditions are delivered. The proposed development would be contrary to advice at paragraph 130 of the Framework which requires development to ensure a high standard of amenity for future occupiers.
30. Again, I find that Policy D1 of the LP, which the Council reference in its third reason for refusal, has little to do with this main issue. I also find no conflict with Policy D11 of the LP which relates to safety, security and emergency resilience.

*The living conditions of neighbouring occupiers*

31. The buildings within the appeal site are loosely arranged in an L-shape. The existing single storey workshop projects alongside the common boundary with 2 Masterman Road (No 2) and is situated opposite neighbouring properties on High Street South and Mitcham Road. The back gardens of the neighbouring terraced properties on Masterman Road and Mitcham Road abut and therefore, these houses are quite well spaced apart.
32. In the proposal, the existing workshop building would be replaced with a total of 3 floors of flatted accommodation. This part of the proposed building would have a stepped nature and would thereby drop down in height. Even so, it would be of quite significant size, with sections of it considerably taller than the existing workshop.
33. Though the Council refer to the upper floor flat that adjoins the site to the north as 116 High Street South, the door sign suggests to me its address is 116a (No 116a). The Council have submitted to me that this flat includes a bedroom window in the building's rear elevation. I have no evidence before me which indicates that this is not the case. This bedroom window would be opposite the proposed upper storey windows of the proposed development which would serve bedrooms and open plan living spaces. External terraces would also serve these upper storeys and although privacy screens are proposed to them, the evidence before me does not provide me with sufficient assurance that these would effectively restrict views from them. Given the proximity and number of these windows and, the views likely to be available from external terraces, an unacceptable infringement upon the privacy of the occupiers of the flat at No 116a would result. Very similar effects would be wrought upon the upper storey flats that adjoin No 116a to the north too.
34. Being 3 storey and flat roofed, the part of the proposed building that would replace the existing workshop would have a large box-like appearance. Despite all elevations of this part of the development not having been submitted, the plans which have, indicate to me that there would be no design interventions which would adequately serve to break this mass down. The proposal would, therefore, harm the outlook of the occupiers of the residential occupiers within No 116a and those same flats which adjoin to the north. Furthermore, given its scale, position and proximity, I also have no substantive evidence before me which indicates that this part of the proposed development would not harmfully reduce the levels of sunlight and daylight that the occupiers of these flats currently receive.

35. The use of various external terraces and balconies would be likely to cause noise at times. However, given the number of terraced properties and adjoining gardens, I also expect that noise from private outside spaces is quite characteristic of the area. Furthermore, as an existing car garage, I expect the degree of noise emanating from the appeal site would be quite high. For these reasons, noise from the private outside spaces proposed would be neither uncharacteristic nor more disturbing than that which prevails in the area.
36. I have already set out that an east facing elevation is not before me. Proposed elevations C and D show variances in the height of the outrigger at neighbouring No 2. I also note that the submitted drawings state that No 2 has not been surveyed. The Council submit to me that the plans contain further inaccurate depictions of the length of the No 2 outrigger and that this affects the analysis of the effects wrought by the size of the proposed building. I have been provided with no compelling evidence which counters the Council's specific submissions in this regard or, which demonstrates to me that the submitted plans are wholly accurate.
37. Such ambiguities hamper the extent to which I can analyse precisely how far beyond the rear of No 2 the proposed development would project and indeed precisely how close to the plot and house at 1 Mitcham Road (No 1) the proposed building would come. In turn, this also affects how certain I can be of the precise effects of the proposed development upon these properties.
38. However, I have already concluded that the proposed development would harm the living of occupiers of upper floor flats on High Street South. Therefore, whether or not the proposal would also harm the occupiers of No 2 or No 1 is not, in these particular circumstances, decisive. Furthermore, that I have identified no harmful noise effects would result from the proposed development does not outweigh the harm that would be caused to the residential occupiers of High Street South.
39. The proposed development would therefore be contrary to Policy D3 of the LP and Policies SP1, SP2, SP3, SP8, S6 and H1 of the NLP. Amongst other matters, these policies require developments to be of high quality design which achieves good neighbourliness, quality neighbourhoods and appropriate living conditions. The proposed development would also conflict with advice at paragraph 130 of the Framework which requires development to ensure a high standard of amenity for existing occupiers. Given its content, I find no conflict with Policy D1 of the LP. Neither do I find conflict with Policy D14 of the LP as I have identified no unacceptable noise effects would result from the development.

#### *Refuse and recycling*

40. As a food and drink use and with the plans identifying a quite large kitchen area to serve it, I have no reason to conclude that the amounts of waste and recycling the commercial unit would produce would not be quite significant. Separated by a lobby, cycle storage and Flat 4, the dedicated refuse and recycling storage area proposed would be quite divorced from the commercial unit. The plans show the only route between the commercial unit and its refuse and recycling area would entail exiting the premises and walking along Masterman Road.

41. Consequently, the refuse and recycling storage for the commercial unit would not be easily accessed and the layout of the development in these regards would not function well. Given the somewhat inconvenient arrangements that would be put in place, there is a clear risk that refuse and recycling may not be properly stored even if the storage space provided is sufficient in capacity terms. I have been provided with no particular refuse or recycling management measures that would allay my concerns. As the harm I have identified relates to the commercial unit, that the arrangements for the future residents may be acceptable does not address my concerns either.
42. It is put to me that the waste and recycling provision proposed is very similar to that which has been approved at the redevelopment at No 3. However, the information before me does not demonstrate that the uses within No 3 would be likely to generate the same levels of waste as the appeal proposals nor that the layout is clearly comparable. Furthermore, I must consider this case on its own merits and form my view in the light of the evidence before me.
43. For these reasons the proposed development would be contrary to Policies D3, D4 and SI7 of the LP and Policies INF3, SP3 and SP8 of the NLP. Together, these policies require that developments be of a high quality of design, are neighbourly, take the most appropriate form, facilitate their efficient servicing and, are provided with adequate, flexible and accessible waste storage and collection systems which meet their needs. The proposed development would not function well, contrary to paragraph 130 of the Framework.
44. Policies D6 and D8 of the LP and Policy SP2 of the NLP, which relate to housing quality and standards, public realm and health are largely irrelevant to refuse and recycling. Therefore, the proposed development would not conflict with them in these regards.

### **Other Matters**

45. The principle of housing in this location may be acceptable including with regards to its locational accessibility and I note that the Council have raised no objection to the loss of the car garage given its location so close to residential property. I have no reason to disagree but, in the main issues, I have nevertheless identified particular harms that would result from the appeal proposal which would be unacceptable.
46. The development would make a modest contribution to housing supply with a range of unit sizes provided too. The commercial unit would provide a service in the area with some economic benefit but, in the main issues, I have set out the harmful public health effects that would, regardless, occur. I accept that the existing car garage may cause some disruptive effects itself but, I have no substantive evidence that demonstrates to me that it is particularly harmful. Overall, any benefits derived from the proposed development are not sufficient to outweigh the harm and development plan policy conflicts I have identified.
47. I have no compelling evidence that, as a result of the development, more parking bays would be introduced into the area or that addressing problematic parking is a particularly pressing need in the area. Neither do I have any reason to conclude that the proposed development would have a positive impact on any fly-tipping or anti-social behaviour that takes place.

48. The flats provided may be accessible for a range of users whilst the development may be adequately landscaped and include cycle and scooter parking. However, the absence of harm in such regards is a neutral factor in my determination and does not outweigh the harm I have identified in the main issues.
49. The appellant submits that the reasons for refusal set out within the Council's delegated report do not match that on its decision notice. However, those parts of the delegated report are setting out the reasons for refusal of a previous planning application rather than the application the subject of this appeal.
50. The appellant draws issue with the manner in which the Council has handled the planning application but, this does not have a bearing on the merits of the case and is not a determinative factor in my decision. I have no substantive evidence before me that indicates that the Council's decision to determine the planning application via delegated powers or, its approach to consultation, was procedurally incorrect or unfair. The application for costs is the subject of a separate decision.

### **Conclusion**

51. 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