



Appeal Decision

Site visit made on 24 October 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2023

Appeal Ref: APP/Z5060/W/23/3318396

292 Lodge Avenue, Dagenham RM8 2HF

- 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 Akbari against the decision of the Council for the London Borough of Barking and Dagenham Council.
- The application Ref 22/01419/FULL, dated 17 August 2022, was refused by notice dated 8 November 2022.
- The development proposed is described as "Demolition of Existing Single Storey Rear Extension and Erection of Single Storey Rear Extension, Change of Shop Front, Conversion of Existing First and Second Floor 1 X 2 Bedrooms Flat into 1 X Studio Flat and 1 X 2 Bedrooms Flat with Loft Conversion with Rear Dormer."

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development cited in the planning application form differs to that contained within the decision notice and appeal form. There is no evidence that this change was formally agreed. In the interests of clarity, I rely upon the description included in the application form for the purposes of the heading above.
3. As part of the appeal the appellant has submitted an amended drawing 01 showing the existing ground floor. The key difference between the amended drawing and the version the Council made its decision on (drawing 01 Rev A) is the ground floor plan more accurately reflects what is currently on site. I have given due consideration to guidance in the 'Procedural Guide: Planning Appeals - England' (2023), and the 'Wheatcroft Principles' referred to in the guidance¹, which addressed the matter of amended plans being submitted with and appeal, and other case law² in deciding whether to accept the revised plan.
4. I consider the proposal before me (should the amended drawing 01 be included), is essentially the same as the scheme that was considered by the Council and therefore that the appeal process is not being used to evolve the scheme³. As such I am satisfied that the revision does not alter the proposed development to an extent that anyone involved in the appeal would be prejudiced or impacted should I accept the amended plan.

¹ Bernard Wheatcroft Ltd v SSE and Another (1982) 43 P. & C.R. 233.

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

³ Annex M of the Procedural Guide Appeals – England advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

5. During my site observations, it was apparent that a change of use had already taken place at the ground floor level from a takeaway use (sui generis) to an office use (Class E). Furthermore, operational works at ground floor to the front, rear and side elevations of the property had also commenced, along with the removal of the extraction flue. As such the submitted plans before me, do not represent the current situation at the site. Nevertheless, notwithstanding these discrepancies, following my site observations and the details before me, I am satisfied with what is being proposed and I have determined the appeal based on the submitted plans (including the amended drawing 01) before me, for the avoidance of doubt.
6. The Council has referred to Policies SP2, SP3, DMD1, DMD6, DME3, DMT2 and DMT3 of the London Borough of Barking and Dagenham's Draft Local Plan Regulation 19 Submission Version (December 2021). This emerging plan is currently at the examination stage. However, I have little information to suggest when the plan is likely to be adopted, or if any policies have been modified, or if there are any unresolved objections. Accordingly, I attribute limited weight to this plan.

Main Issues

7. The main issues are the effect of the proposal on i) parking provision; ii) highway and pedestrian safety; iii) living conditions of future occupiers having particular regard to matters of outdoor amenity space, fumes and odour; and iv) the vitality and viability of the Round House Neighbourhood Centre.

Reasons

Parking provision

8. Policy T6.1 of The London Plan (LP), adopted March 2021 sets-out the applicable maximum parking provision by reference to the Transport for London Public Transport Accessibility Levels (PTAL). With the aim of encouraging greater use of non-car modes of transport in areas with higher PTAL. The appeal site has a low PTAL of 1b, indicating that the site does not benefit from sustainable transport measures. Given its location the proposal would require the provision of a maximum of 3 off-street car parking spaces for the 2 residential properties.
9. The proposed development would not benefit from any off-street parking spaces and therefore would increase demand for parking on the street. Due to the presence of double yellow lines, opportunities for on-street parking are limited within the vicinity of the site. I have no information from the appellants with regard to a parking stress survey, nor have I been presented with any details of a travel plan or alike, seeking to reduce reliance on the car and promoting more sustainable forms of transport. As such, there is no evidence before me, to clarify that there is availability of sufficient car parking spaces or that there are particular pressures caused by existing uses or developments in the area.
10. Accordingly, the proposal fails to demonstrate that it would not result in a harmful effect on the free flow of highway traffic, caused by the increased demand for parking on nearby roads. It would be contrary to LP Policies T4, T5 and T6.1 and Policies BR9 and BR10 of the Planning for the future of Barking and Dagenham Borough Wide Development Policies Development Plan

Document (DPD), adopted March 2011 which amongst other things, seek to ensure that development adheres to parking standards and facilitates meeting strategic targets in respect of reducing car trips and utilising more sustainable modes of transport.

Highway and pedestrian safety

11. The appeal site is an end of terrace three-storey property, with commercial use at the ground floor and residential use in the upper floors. The site adjoins an accessway that serves the car park associated with the flatted development at Nos 292-316 Lodge Avenue. From the plans before me access to the proposed flats appears to be at the rear of the site via the aforementioned accessway. However, neither the accessway nor the car park has been indicated within the red line on the site plan and would appear to be outside the control of the applicant, as such it cannot be relied upon to provide the required access. Furthermore, I have no evidence that suggests that the use of the accessway and/or car park for access has been secured through a legal agreement.
12. During my site observations the area to the flank appeared lightly trafficked, and there was a distinct lack of pedestrian activity. However, the accessway is not illuminated and is a narrow route which does not benefit from an adequately sized safe pavement. Consequently, the proposed layout would require pedestrians, especially those with mobility issues or with push chairs to venture into the road to negotiate the access to the site. This would result in conflict between vehicle and pedestrian users, albeit limited, effecting the pedestrian safety of future occupiers.
13. The appellant highlights that alternative access could be achieved via the service access at the rear of the terrace to the north of the site. However, from the plans before me there is no access proposed in this location.
14. As a result, I must conclude that the proposed dwelling would be likely to pose a risk to highway and pedestrian safety. This would be contrary to the relevant sections of LP Policies D4, D6 and D11, Policy CP3 of the Planning for the future of Barking and Dagenham Core Strategy (CS), adopted July 2010, DPD Policies BP8 and BP11 which among other things seek new development to protect amenity, provide safe environments and ensure the safety of occupants, visitors and passers-by in the design of all development. The proposal would also be contrary to Paragraphs 110 b) and 111 of the National Planning Policy Framework (the Framework) as it has not been adequately demonstrated that there would not be an unacceptable impact on highway safety.

Living conditions

15. The Council raised concerns in respect to the living conditions of future occupiers due to the proximity of a ventilation extraction unit associated with the takeaway use, which would terminate close to the proposed rear dormer. However, as highlighted in my Preliminary Matters above, this use has now ceased and the extraction flue has been removed, as shown in the existing and proposed plans. Consequently, I find no harm to the living conditions of future occupiers in respect to fumes and odour.
16. The LP Policy D6 states a minimum of 5m² of private outdoor space should be provided for 1-2 person dwellings and an extra 1m² should be provided for each additional occupant. DPD Policy BP5 sets out external amenity space

standards for new dwellings. It states that these should normally be met, although there may be scope for a reduction where a site adjoins extensive parkland, and exceptions in town centres where this would help the Council achieve its housing targets.

17. The figures in the LP Policy D6 are minimum standards which are intended to act as a benchmark for high design quality, and, given the appeal proposal provides no form of private outdoor amenity space, it would therefore conflict with this policy. However, there is public open space available in the area, such as Mayesbrook Park located in a short walking distance from the appeal site, that offers practical and good outside amenity space. Nevertheless, the development would not provide any private space, or a good-sized balcony or terrace where tables and chairs, washing lines and other domestic paraphernalia could be used and stored.
18. Consequently, this would result in an unsatisfactory living environment for future occupiers and would be in conflict with the relevant sections of LP Policy D6, CS Policy CP3 and DPD Policies BP5, BP8 and DP11 which among other things, seeks to achieve high quality housing which deliver appropriate amenity with comfortable outdoor environments. It would also be contrary to the aspirations of the Framework and the Councils Residential Extensions and Alterations Supplementary Planning Document (SPD), adopted February 2012, which also seek to deliver high quality design and a good standard of amenity for all existing and future occupants of buildings. However, in considering the weight given to the conflict with policy in the overall planning balance, I have had regard to the proximity of the nearby public space.

Vitality and viability of the Round House neighbourhood centre

19. CS Policy CE1 seeks to retain and improve neighbourhood centres, with Policy BE1 of the DPD further seeking their protection subject to exceptions. These exceptions include where it can be shown that the commercial unit in question is no longer viable for retail purposes, subject to 12 months marketing, and the alternative use must demonstrate that a local need exists. I have been presented with little marketing evidence in respect to the viability of the unit, nor whether there is any need for office use within the area. Consequently, the appeal proposal conflicts with the policy requirements.
20. Notwithstanding this, there are a number of other considerations which bear weight to be given to this lack of accordance with the policy. The appellant refers to an allowed appeal decision⁴ at No 282 Lodge Avenue, where the Inspector concluded a reduction in the available retail space would not harm the vitality and viability of the Round House neighbourhood centre, as a retail frontage would be retained and there was evidence to suggest that a smaller unit was more attractive to tenants.
21. As stated above, the appeal site is currently occupied and in use as an office and represents only a limited loss of commercial floorspace from its previous use as a takeaway. Given that the premises is currently occupied, and in use, it would further justify the weight given by the Inspector in the decision at No 282, in that whilst relatively smaller the ground floor unit would still maintain a viable commercial use within the Round House neighbourhood centre.

⁴ PINS Ref: APP/Z5060/W/21/3268706

22. For these reasons and on the basis of the limited evidence to the contrary, it is unlikely that the modest loss in the commercial floorspace would prejudice the viability of commercial uses at the site nor the vitality of the neighbourhood centre. However, whilst I acknowledge the minor conflict with LP Policy E9, CS Policy CE1 and DPD Policy BE1 which seek to retain commercial facilities, in this case I find no harm from the proposed development given its modest nature, and thus the appeal proposal would not harm the vitality and viability of this neighbourhood centre. Furthermore, I do not find conflict with LP Policy SD8 which focuses principally on London's Town Centres network, which is of little relevance to this main issue.

Planning Balance and Conclusion

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise.

24. I have found that the proposed development would not provide adequate parking provision and would harm highway and pedestrian safety and the living conditions for future occupiers, which collectively attract substantial weight against the scheme. However, the scheme would provide a windfall of a new unit towards the Council's existing housing stock. The Housing Delivery Test (HDT) provides a figure of 66% for the London Borough of Barking and Dagenham on the 2021 HDT results. As such, the Council cannot currently demonstrate a five-year supply of deliverable housing sites. Consequently, because of the provisions of footnote 8, paragraph 11 d) (ii) of the Framework should be applied.

25. Therefore, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the scheme. I have found the development would offer potential benefits in terms of providing a single modest dwelling to the Council's housing stock, given that this is a small site and could be brought forward relatively quickly. It would also have benefits by providing employment opportunities during the construction phase of the development, and future residents accessing and supporting local services. I have attached moderate weight to these factors in favour of the proposal.

26. Taking all of the above into account, in applying paragraph 11 d) (ii) of the Framework, the extent to which there would be adverse impacts of granting planning permission, relating to my findings on the main issues above, would significantly and demonstrably outweigh the above benefits of the proposed development, when assessed against the policies in the Framework taken as a whole.

27. For the reasons outlined above and having regard to the development plan as a whole, and all other relevant material considerations including the provisions of the Framework, the appeal is dismissed.

Robert Naylor

INSPECTOR