



Appeal Decision

Site visit made on 1 August 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2023

Appeal Ref: APP/U5930/W/23/3316330

Garages Adjacent 78 Brighton Avenue, London E17 7NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Adam Hogge against the decision of the London Borough of Waltham Forest.
- The application Ref 223095, dated 18 November 2022, was refused by notice dated 13 January 2023.
- The application sought planning permission for: *Residential Development. Erection of two x 2 bed houses and provision of garages* without complying with a condition attached to planning permission Ref 1999/0790 dated 27 September 1999.
- The condition in dispute is No.7 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 there shall be no extension to the dwelling(s) without the prior approval of the Local Planning Authority.*
- The reason given for the condition is: *To safeguard the amenity of the locality.*

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 13 September 2023.

Decision

1. The appeal is allowed and the planning permission reference 1999/0790 for *Residential Development. Erection of two x 2 bed houses and provision of garages* at Garages Adjacent 78 Brighton Avenue, London E17 7NF granted 27 September 1999 by the London Borough of Waltham Forest, is varied by deleting condition No.7.

Preliminary Matters

2. The dwellings permitted by the planning permission Ref 1999/0790 (the permission) are completed and comprise Nos. 84 and 86 Camden Road. The appeal site includes both of these properties, notwithstanding references within the Council's evidence to a single property.
3. The planning application form indicates that the appellant sought both the variation and removal of the disputed condition. However, the accompanying statement sets out that the appellant sought the removal of the condition in its entirety. The Council states that the appellant made no objection to the description of the proposal as set out in its acknowledgement letter. Section E of the appeal form states that the description of development has not changed, but nevertheless, a different wording has been entered: "*Removal of condition 7 (removal of PD Rights) attached to planning permission reference 1999/0790 granted 27/09/1999.*" Neither of the main parties has provided confirmation

that a revised description was agreed. Therefore, as the Council considered the proposal on the basis of the removal of the disputed condition, rather than a variation, so shall I.

4. The Council's officer report concerning the planning application listed policies within an emerging plan *Shaping the Borough – London Borough Waltham Forest Draft Local Plan Part One (Submission Draft April 2021)* (EP). However, these policies are not referenced within the decision notice, nor are they relied upon by either of the main parties in this appeal. There is no clear evidence before me as to whether there are unresolved objections to the relevant EP policies. Consequently, I cannot be certain that these policies are in their final form. Therefore, I attach little weight to these emerging policies.

Background and Main Issue

5. Planning permission was granted with a condition restricting permitted development rights. The appellant seeks the removal of that condition, and the Council considers it to be reasonable and justified. Therefore, the main issue is whether the condition is reasonable or necessary with respect to the reason given for its imposition and the tests in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG).

Reasons

6. The appeal site comprises a pair of two storey semi-detached dwellings in a residential area. The prevailing built forms are two storey terraced properties in long rows in regular shaped plots. The appeal site is uncharacteristic in this regard, being located between two long rows of terraces sited almost at right angles to each other. Each of the semi-detached properties in the appeal site occupies an irregular, almost triangular shaped plot, with principal elevations well set back from the street. In this regard the full width of the plots is partly obscured by neighbouring terraced forms when viewed from the street. The appeal properties share an initial section of driveway, which leads to parking areas to the side of each property, with private amenity space to the side and rear.
7. The Council states that the permission granted in 1999 "*narrowly complied with the minimum development control parameters and planning considerations.*" There is no further evidence before me that clearly sets out the relevant parameters and considerations at the time permission was granted, nor the specific harm(s) identified at that time that warranted the removal of permitted development rights. Consequently, by the Council's own evidence, it seems to me that the permission complied with policy and/or guidance at the time it was granted, and thus it is by no means clear that the removal of permitted development rights at that time was justified.
8. The Council's position is that permitted development rights were removed in the interests of visual amenity and adequate living conditions, and its refusal to remove the condition is referenced to current development plan policies. Amongst other things, these policies seek to ensure that housing development respects local character, meets relevant standards, and they address the living conditions of existing and future occupiers and therefore they do refer to amenity in planning terms.

9. However, the disputed condition references The Town and Country Planning (General Permitted Development) Order (the Order) that was in operation at that time. The current version of the Order¹ sets out permitted development rights with controls regarding various factors including size and space. The planning history of the site includes various refusals for extension schemes and a pre-application enquiry, but there is no further detailed evidence before me to demonstrate the nature of these proposals and how they relate to the scope of permitted development rights under the Order as amended; and, if they are within the scope of such rights, what specific harm would arise as a result. At my visit I saw nothing to suggest that the blanket removal of rights was appropriate. Consequently, I find that the Council's concern that harm that would arise from the reinstatement of such rights is not robustly demonstrated.
10. In such circumstances, the blanket removal of permitted development rights cannot be considered reasonable or necessary, as required by the PPG and the Framework.
11. In reaching this view, I have had regard to the three appeal decisions² submitted by the appellant. While the circumstances of the cases are not necessarily the same as that before me, all three decisions make clear that the removal of permitted development rights needs to be clearly justified, and in this regard, I find my decision to be consistent with them.

Conclusion

12. For the reasons given above I conclude that the condition is not reasonable or necessary. The appeal should therefore be allowed, and the disputed condition should be deleted.

J Moore BA (Hons) BPL MRTPI

INSPECTOR

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

² APP/P5870/W/15/3004224, APP/C3240/W/18/3216921 and APP/Q5300/W/21/3277496.