



Appeal Decision

Site visit made on 17 October 2023

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Appeal Ref: APP/U5930/W/23/3319950

161 Brookcroft Road, Waltham Forest, Walthamstow E17 4JP

- 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 Vijay Kumar against the decision of the Council of Waltham Forest London Borough Council.
 - The application Ref 222732, dated 16 September 2022, was refused by notice dated 14 February 2023.
 - The development proposed is the subdivision of the land at No.161 and construction of a two-storey (plus roof accommodation) self-contained dwelling house (1 x 3-bed) with a rear facing dormer. Works include, new front boundary wall, bin storage and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of the proposal from the Council's decision notice. It adequately and simply describes the proposed development instead of the much longer and detailed description given on the application form.

Main Issues

3. The main issue is the effect of the proposal on the living conditions of the occupiers of 161 Brookcroft Road with particular regard to outlook, daylight and sunlight.

Reasons

4. No 161 Brookcroft Road is a two-storey end of terraced house with attached garage which has a larger than average plot size when compared to other houses on the street. The proposal seeks to demolish the garage attached to the side and construct a two-storey dwelling.
5. The Council's Residential Extensions and Alterations SPD¹ states that for the purposes of assessing the amenity of neighbours that the Council will use the 45 degree rule. This means that an extension should not exceed a line taken at 45 degrees from the edge of the nearest ground floor window of a habitable room in an adjoining property.
6. The proposal includes a two-storey outrigger that would take up the majority of the land to the side of No 161 leaving a narrow side return which would slope towards No 161. The proposal would breach the 45 degree rule set out in the

¹ Residential Extensions and Alterations Supplementary Planning Document Adopted February 2010

Councils Residential Extensions and Alterations SPD, which combined with the overall height of the outrigger and narrow side return, would create an increased sense of enclosure for the occupiers of No 161 resulting in an unacceptable outlook for these occupiers.

7. The proposed height and narrow side return would also restrict daylight and sunlight for the occupiers of No 161. In particular the rear bedroom is only served by one window, the closeness of the outrigger and resulting increased sense of enclosure would block daylight and sunlight to this room to the detriment of the occupiers of No 161.
8. In reaching this view I have had regard to the appellants sun/shadow analysis which shows that the proposal would result in increased shadowing of No 161, particularly during the summer solstice whereby the property would be in shadow most of the day.
9. I therefore conclude that the proposal would unacceptably harm the living conditions of the occupiers of No 161 with particular regard to outlook, daylight and sunlight. It would be contrary to policies CS2, CS13 and CS15 of the Waltham Forest Local Plan Core Strategy adopted March 2012 (CS) and policies DM4, DM29 and DM32 of the London Borough of Waltham Forest Development Management Policies Local Plan Adopted October 2013 (LP).
10. Amongst other things, these policies seek to ensure development is of high quality design, satisfactory amenity is provided for surrounding occupiers and daylight, sunlight and outlook is maintained for existing occupants in their homes and gardens.
11. The proposal would also be contrary to the guidance contained within the Councils Residential Extensions and Alterations SPD as the 45 degree rule would be breached.

Other Matters

12. The Council's second reason for refusal concerns the lack of a S106 agreement to address highway related works, the monitoring of a construction logistics plan, improvement of sustainable modes of transport and mitigation of the impact on the Epping Forest Special Area of Conservation (SAC). Policy DM36 of the LP sets out that the Council will seek a planning obligation in order to facilitate development and requires new developments to be served by adequate physical and social infrastructure. The Council's Planning Obligation SPD² also provides further guidance.
13. The appellant has not sought to contest the need for the contributions. However, the appellant has provided no completed planning obligation as part of the planning application or this appeal.
14. The obligations sought would do no more than mitigate the effects of the proposal. Therefore, even if an obligation had been provided, it would weigh neutrally in the planning balance and not overcome the harmful effects that I have identified. As such there is no need to explore these matters further.
15. The appeal site falls within the zone of influence for the Epping Forest Special Area of Conservation. As the competent decision-making authority, if I had

² London Borough of Waltham Forest – Revised Planning Obligations Supplementary Planning Document – Adopted Version 2014

been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

16. The appellant has stated that the Council's pre-application advice was positive, however I must consider the merits of the case before me. I am therefore able to give only limited weight to any pre-application discussions that took place which would not outweigh the harm I have identified.
17. The appellant has referred to conduct by the Council which they consider to be unacceptable, including contradictory communication, spelling errors, ambiguities, handling of the application and delay in reaching a decision. I note the appellants frustration, but I can only consider the planning merits of the case.

Conclusion

18. For the reasons set out above, having had regard to the development plan read as a whole, and all other material considerations, I conclude that the appeal should be dismissed.

D Wilson

INSPECTOR