



Appeal Decision

Site visit made on 11 August 2023

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2024

Appeal Ref: APP/U5930/W/23/3316399

59A Hainault Road, Waltham Forest, Leytonstone E11 1EA

- 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 Sukhvinder Tatla against the decision of the Council of the London Borough of Waltham Forest.
- The application Ref 221601, dated 30 May 2022, was refused by notice dated 24 August 2022.
- The development proposed is described on the planning application form as:
"Existing use is E(a) shop at ground level and one C3(a) flat on levels one and two. Proposal is a loft conversion, ground floor rear extension and conversion of the ground floor extension, levels one and two and the loft conversion to a large 7 room HMO with external amenity space to rear."

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development on the availability of on-street parking.
 - The effect of the proposed development on the living conditions of the occupiers of the neighbouring properties at Nos 57 and 61 Hainault Road in terms of light and outlook.
 - Whether the proposed development would provide suitable living conditions for future occupiers of the host property in terms of light and outlook.

Reasons

Parking

3. Policy DM16 of the London Borough of Waltham Forest Development Management Policies Local Plan – Adopted October 2013 (the DMP) seeks to effectively manage parking and to ensure the provision of safe and attractive parking facilities by, among other objectives, encouraging car-free and car-capped development in certain locations, including areas with high levels of parking stress.
4. The appeal property sits above a commercial unit within a shopping parade, and it is located within an area subject to parking controls. Hainault Road,

directly to the front of the appeal property, is subject to time-limited and metered parking restrictions.

5. Residential parking permits are required in the roads leading off Hainault Road, including Leigh Road, Midland Road and Moyers Road, which runs to the rear of the appeal property. At the time of my visit these streets were heavily parked with very limited space available for residential parking, albeit I acknowledge this observation was a snapshot in time.
6. The existing property is a single dwelling with 3 bedrooms. Although the current use places no upper limit on the number of occupants, it would be highly likely that the proposed creation of a 7-bedroom house in multiple occupation (HMO) would increase the number of occupants at the property, particularly in terms of the number of adults who may have access to their own vehicle. Given these factors, there is a strong likelihood that the number of vehicles associated with the property would increase.
7. There appears no debate between the parties that, if approved, the development should be car-free. The appeal site is in a reasonably accessible location, being within a small shopping parade, adjacent to a bus route and a short walk from a railway station. However, my observations on site suggest the area does currently exhibit high levels of parking stress. I am provided with no substantive evidence to indicate differently or to persuade me that the proposal would not contribute further to parking pressures and associated highway safety issues such as parking in inappropriate locations or causing obstructions to roads and footways. As such, to ensure compliance with Policy DM16, the development should be car-free.
8. To address this matter, the appellant has provided a signed and dated planning obligation by way of unilateral undertaking, which seeks to prevent occupiers of the appeal property applying for residential parking permits other than in exceptional circumstances, such as the occupier being registered as disabled. For several reasons, the Council does not consider the obligation in its current form to be acceptable. The appellant disputes this.
9. Notwithstanding the disagreement between the parties on this matter, I must consider whether the obligation falls within the scope of section 106 (1)(a)-(d) of the Town and Country Planning Act 1990.
10. The obligation places limits on the ability of occupiers to apply for a residential parking permit. It includes a requirement for each new residential occupier to be informed by the owner of these restrictions prior to occupying the property. The plan submitted as part of the obligation covers only the appeal property.
11. Case law¹ establishes that the references in section 106 to the "land" must mean land in which the person making the agreement is interested. In the current case, the only land identified by the obligation is the appeal property. However, the restriction sought by the Council in relation to parking permits applies to the use of residential parking bays on the public highway, rather than the use of the appeal property. There is no mechanism within the obligation, for example via an amendment to a Traffic Regulation Order (TRO), to directly link the appeal property, being the "land" for the purposes of the obligation, to the residential parking bays. Consequently, the obligation would

¹ R (oao Khodari) v Royal Borough of Kensington and Chelsea & Cedarpark Holdings Inc [2017] EWCA Civ 333.

not comply with the strict definition of section 106 (1). It would therefore not be enforceable under section 106 (3) and (5).

12. For the reasons above, in the absence of a suitable mechanism to ensure that the proposal provides car-free development, the proposal would be likely to increase on-street parking pressure to the detriment of highway safety, which, in respect of this issue, would conflict with Policies CS7 and CS15 of the Waltham Forest Local Plan Core Strategy – Adopted March 2012 (the CS) and Policy DM16 of the DMP, which together seek, among other objectives, to promote sustainable transport, encourage car-free and car-capped development in areas with high levels of parking stress, and to improve the way places function.

Living conditions of neighbouring occupiers

13. The Council's decision notice refers to the effects on the living conditions of occupiers at the first and second floors of Nos 57 and 61 Hainault Road. Following the submission of additional evidence at the appeal stage, the Council considers in its statement of case that the proposal would not generate harm to the second-floor windows of No 61 Hainault Road. Based on the submitted evidence, I agree that the proposals would not cause harm to these windows.
14. I acknowledge references to other existing extensions having been granted planning permission in the vicinity of the site. However, I have considered this appeal on the individual merits of the case.
15. The Council's submission notes no concerns with the first-floor windows at No 61, but states that the proposals would lead to loss of light and outlook to the first and second floor windows to the rear of No 57. The appellant has provided drawings to illustrate how the proposed first and second floor rear extensions would relate to the corresponding windows to the rear of No 57, with reference to the '45 degree rule' cited in the Residential Extensions and Alterations Supplementary Planning Document – Adopted February 2010 (the SPD). Although the SPD does not comprise part of the development plan, it is a material consideration to which I attach some weight.
16. It appears that the existing first floor outrigger at the appeal property breaches the 45 degree line taken from the closest first-floor window at No 57. Whilst the proposed extension would extend the depth of the existing rear outrigger, it would extend no closer to the boundary. The effect of the increased depth in terms of the daylight and outlook afforded to No 57 would therefore be marginal, and a reasonable angle of outlook would be retained over the rear garden areas to ensure the proposals would not burden the adjoining property with an unacceptable degree of enclosure.
17. The second-floor rear extension would very marginally breach the 45 degree line taken from the closest corresponding windows on the first and second floors of No 57. The appellant has illustrated how the rear corner could be chamfered to ensure the 45 degree line would not be breached. However, this breach would be so marginal that the effects on the living conditions in relation to the second floor window would be barely noticeable, if at all, compared to the chamfered example. Moreover, as the proposals would cover broadly the same footprint as the existing first floor extension, which is currently visible from the corresponding first floor window of No 57, the effects on this window

would also be marginal. Accordingly, the proposals would be acceptable in terms of daylight and outlook in relation to the first and second-floor windows of No 57.

18. The proposed extensions would be to the northeast of the relevant windows on No 57. Although I am provided with no technical evidence with regard to sunlight, given the northerly aspect of the rear elevations whereby the extent of sunlight into those rooms would currently be limited, I find no evidence that the proposal would lead to a harmful loss of sunlight.
19. Although not cited in the Council's reasons for refusal, representations from the neighbouring occupier of No 61a have raised concerns regarding the effect of the proposal on the light afforded to their roof garden, which is positioned to the rear of the first-floor outrigger to the north of the buildings. Whilst the proposal would involve the creation of a wall against one side of the roof garden, the rear and opposite side elevations would remain open to afford daylight and outlook. Although the roof garden may receive some sunlight at present, this would appear to be limited by the existing position of the buildings. Whilst once again noting the lack of technical evidence in this regard, I have no substantive evidence to find the proposals harmful in terms of reduction in sunlight to the roof garden.
20. For the reasons given above, the proposed development would retain acceptable living conditions for the occupiers of the neighbouring properties at Nos 57 and 61 Hainault Road in terms of light and outlook and would therefore, in respect of this issue, accord with Policies CS13 and CS15 of the CS, and Policies DM4, DM23, DM29 and DM32 of the DMP. Together these policies seek, among other objectives, to ensure all developments provide satisfactory amenity for future and surrounding occupiers, to address issues of height and scale sensitively, to support health and wellbeing, and to achieve high standards of urban and architectural design. It would also generally accord with the guidance in the SPD, which has similar aims.

Living conditions of future occupiers

21. Because of the similarity between the proposed first and second floor extensions at the host property and those existing at No 57, the resulting effects relating to daylight and outlook afforded to the first and second floor windows of the host property would be broadly comparable to those I have previously considered to be acceptable at No 57.
22. Considerations relating to sunlight would be slightly different due to the position of the windows and in relation to the extensions and the trajectory of the sun. However, as at No 57, the affected windows would have a northerly aspect and I find no evidence that the proposals would lead to a harmful loss of sunlight.
23. The Council considers that the proposal would create an alcove that would enclose the bedroom windows. However, any such effect would be similar to that felt at No 57. Having found that the effects on No 57 would be acceptable, it follows that I find the same with regard to the corresponding windows at the host property.
24. The ground floor kitchen/lounge/diner area would be provided with a reasonably sized openable glass door to the rear elevation that would provide

outlook to the modestly sized amenity area. Whilst the depth to the rear boundary from the rear elevation would not be significant, it would be sufficient to provide a reasonable level of daylight and outlook for the room. Whilst there are mature trees to the rear of the garden, their position to the north of the building would not be likely to adversely affect sunlight, and their separation from the building would be adequate in terms of daylight effects. Moreover, the room would be provided with 4 skylights to enhance the amount of both daylight and sunlight afforded to occupants. The light and outlook provided to this room would therefore be acceptable.

25. For the reasons given above, the proposed development would provide acceptable living conditions for future occupiers of the host property and would accord with Policy CS2 of the CS and Policy DM6 of the DMP, which together seek, among other objectives, to require high quality design for all new housing development, and for HMO developments to provide a good standard of accommodation.

Other Matters

26. The appeal site is in the zone of influence of the Epping Forest Special Area of Conservation (the SAC), in which development proposals have the potential to contribute to recreational pressure on the SAC and may be required to provide mitigation. However, because I am dismissing the appeal for other reasons, it is not necessary in this case to consider this matter within an Appropriate Assessment.

Conclusion

27. I have found that the proposed development would retain acceptable living conditions for the occupiers of the neighbouring properties at Nos 57 and 61 Hainault Road and would provide acceptable living conditions for future occupiers of the host property. However, I have also found that the proposal would increase on-street parking pressure to the detriment of highway safety. As such, the proposed development would conflict with the development plan as a whole and there are no material considerations that would lead me to a decision other than in accordance with the development plan. For the reasons given above, I conclude that the appeal should be dismissed.

P Storey

INSPECTOR