

## Appeal Decision

Site visit made on 16 January 2024

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

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

**Decision date: 24<sup>th</sup> January 2024**

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**Appeal Ref: APP/Z5060/W/23/3327425**

**28 Upney Lane Barking IG11 9LW**

- 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 Barking Community Forum against the decision of the Council of the London Borough of Barking and Dagenham.
  - The application Ref 22/02168/FULL, dated 16 December 2022, was refused by notice dated 9 February 2023.
  - The development proposed is the construction of an outbuilding to the rear of the property, consisting of a basement and ground floor for use as a multi-purpose community Facility (Class use F2(b)).
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The National Planning Policy Framework (the Framework) has been updated since the parties' appeal submissions were made. However, as the revisions do not materially affect the matters under consideration in this appeal, it was not necessary to seek further comment.

### Main Issues

3. The main issue in this case are:
  - whether the proposal is appropriately located having regard to development plan policies on community facility proposals;
  - the effect of the proposal on the character and appearance of the area;
  - the effect of the proposal on the living conditions of the occupiers of 28 and 26 Upney Lane and 33-37 Ventnor Gardens with particular regard to noise, outlook, overshadowing and privacy;
  - whether the proposal would lead to undue parking stress in the area.

### Reasons

#### *Appropriately located?*

4. Policies GG1 and S1 of the London Plan 2021 (LP) and Policy CC2 of the Council's Local Development Framework Core Strategy 2010 (CS) support the provision of community facilities to meet local needs. They also require such
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facilities to be sustainably located with a wide range of travel options and encourage co-location with other social infrastructure, shared use and the use of high street or neighbourhood centre locations. Additionally, LP Policy S1 advises that proposals should be supported by a needs assessment.

5. The proposal would include two classrooms and a multi-purpose hall providing for a range of classes, advice services and prayer space.
6. Although a formal needs assessment has not been submitted, the appellant refers to the increasingly diverse demographic make-up of the area and the absence of suitable local facilities, which has a particularly adverse effect on hard-to-reach communities. The proposal is also supported by a petition containing some 536 signatures and 23 positive comments from members of the public. Moreover, the Council refers to a 2017 Faith Groups and Meeting Places Study which it considers broadly supports the provision of a new community facility and recognises that Muslim groups are more likely to have a preference for sites in residential areas. Therefore, there appears to be significant community support for the proposal. Nevertheless, a formal assessment would help to more clearly define the needs of the community and assist in evaluating the suitability of the site to meet those needs.
7. The appeal site is some 150m from the Faircross Parade neighbourhood centre. The appeal site is in a primarily residential area, albeit on a fairly busy road and there is a health care centre and church nearby. There is a bus stop close to the site, although I have not been provided with details of the routes it serves. The location has a PTAL rating of 3, indicating a moderate level of public transport access.
8. The appellant's review of existing facilities focusses on the Longbridge ward and emphasizes the preference for a location within walking distance of the community the facility would serve. While I recognise this preference and the associated sustainable travel benefits, there is very limited evidence on the potential catchment area for the facility. The catchment defined in the appellant's Transport Statement is based on the proximity to other facilities and a 1km walking distance. However, there is little to relate this to the home locations of potential attendees.
9. The review of other facilities is also brief and does not, for example, include the nearby Hedgecock Community Centre. The appellant stresses the closeness of the appeal site to Faircross Parade. Equally, this suggests that a new facility situated within this centre would be locationally suitable, particularly in the absence of a fully defined catchment area for the facility. There is insufficient evidence to show that such a location would not allow for frequent visits by attendees, including those from hard to reach communities. On the other hand, a site in the centre would better meet the development plan policy aims of supporting local centres, ensuring sustainable travel options and the co-location of social infrastructure.
10. The appellant advises that the Longbridge community has been working with the Council to find a suitable location over an extended period and that its attempts to find a premises in Faircross Parade have been unsuccessful. Again however, very limited information has been provided on the level of search effort, search parameters or the degree of flexibility adopted in assessing the suitability of any potential site or premises. A formal needs assessment would assist in this exercise.

11. Overall therefore, I find that, based on the information available, the proposal would not be appropriately located having regard to LP Policies GG or S1 or CS Policy CC2. With regard to the appeal site in particular, this conclusion is reinforced by my findings below on the character and appearance and living conditions issues.

*Character and appearance*

12. The proposal would be located to the rear of the two storey semi-detached dwelling at 28 Upney Lane, but would have a frontage onto Levett Road. Development along this section of road comprises the flank walls or side gardens of two storey houses abutting the footpath. The exception is St Erkenwald's Church which occupies its own generous plot. The proposed building would, therefore, be at odds with the prevailing pattern of development. Moreover, its location, scale, form and independent use and access would set it apart from outbuildings in the rear gardens of other properties abutting the road. The outbuildings to the rear of 5 Ventnor Gardens and 6 to 12 Upney Lane are set back from Levett Road, do not contribute to the street scene and, therefore do not provide a robust justification for the appeal proposal.
13. Although a large part of the proposed accommodation would be at basement level, the ground floor accommodation would be broader and deeper than the footprint of the host dwelling and the hipped roof would add to the bulk of the building. Together with the ancillary features such as vehicle and cycle parking and bin storage therefore, the scale of the proposal would be disproportionate to the host building, notwithstanding that its plot is somewhat larger than others in the area.
14. In reaching this finding, I recognise that the proposed single storey building would be less bulky than a two storey building which might otherwise be more in keeping with the surrounding dwellings. I also recognise that the mix of external materials proposed would be consistent with those of nearby buildings. However, these considerations would not be sufficient to overcome my concerns regarding the scale and form of the proposal.
15. Consequently, I find that the proposal would have a harmful effect on the character and appearance of the area. It would, therefore, conflict with LP Policy D3, CS Policies CM1 and CP3 and Borough Wide Development Plan Policies Development Plan Document March 2011 (DPD) Policies BP8 and BP11. Together these policies require proposals to achieve a high quality of design and respond positively to local distinctiveness with due regard to the street hierarchy, building types, forms and proportions. Nor would the proposal accord with paragraph 135 of the Framework insofar as it has similar aims.
16. The second reason for refusal also cites conflict with LP Policies D4, which deals with the design process, and H2, which deals with housing on small sites. While I have found the submitted design to be harmful, there is no substantial evidence to show that the process leading to that design was defective. Since the proposal is not for housing, Policy H2 is of limited relevance.

*Living conditions - noise*

17. The appellant has submitted a Noise Impact Assessment Report which assesses the noise effects of activities within the proposed building. Although I have no

reason to doubt these findings, the Report does not consider the noise effect of comings and goings outside of the building. The measured existing noise levels, while within the appeal site, are considered by the Report to be representative of noise sensitive receptors close to the site. They show relatively low levels of noise during the day time and night time. This is consistent with the primarily residential character of the surrounding area.

18. The proposal would have a capacity of up to 54 people. The appellant contends that this capacity would not be reached in practice. Nevertheless, the proposal creates the potential for that number of people to use the facility. While it may be unlikely that all would come or go at the same time, the nature of the activities proposed (for example classes and prayers) could be expected to have defined start and finish times. As such, people are likely to arrive and leave over a short space of time. The facility would be open until 22.00 hours seven days per week. Even if a significant proportion of attendees walk to the facility, noise from voices and disturbance from the number of people moving through a fairly tranquil area, combined with car doors closing and engines starting, would be disruptive given the relatively low level of noise in the area.
19. The appellant's Impact Management Report refers to the mitigating effect of a green buffer zone around the proposed building. However, it would be no larger than a modest rear garden and its mitigating effect has not been assessed. Having regard to the relatively close proximity of housing surrounding the site (in particular 26 and 28 Upney Lane), I consider that noise and disruption from comings and goings would have a harmful effect on the living conditions of occupiers.
20. The Impact Management Report includes measures to encourage attendees to come and go in a quiet orderly manner. However, in practice, these are likely to prove difficult to enforce and the facility operator would have limited control over the actions and activities of people outside of the proposed building.

*Living conditions – outlook, overshadowing and privacy*

21. The proposed building would be sited with its 8m long flank wall some 9m from the rear elevation of the retained dwelling at 28 Upney Lane and the boundary fence would be around 5m from it. A pitched roof would rise above the single storey flank wall. The rear elevation of No 28 contains large windows at ground floor serving principal rooms. Having regard to the length, height and proximity of the proposed building and boundary fence, I consider that they would have an overbearing effect on the outlook from the ground floor rear windows and garden area of No 28. Moreover, as the building and fence would be positioned to the south-west of No 28, they would be likely to overshadow a significant proportion of the retained garden, particularly later in the day.
22. Fairly large windows serving the multipurpose hall in the flank wall of the proposed building would be 9m from the rear windows of No 28. At 1.5m high, the intervening boundary fence would not be tall enough to prevent short-range intervisibility, leading to a loss of privacy for the occupiers of No 28. While the fence could be made taller, this would exacerbate my concerns regarding outlook and overshadowing.
23. The proposed building would be positioned some way off the common boundary with No 26 and at an oblique angle to views from the neighbouring property's rear windows. Given this arrangement, I consider that its effect on the living

conditions of the occupiers of No 26 by reason of loss of outlook and overshadowing would not be significant. Similarly, the proposed building would be sufficiently separated from the dwellings at 33 to 37 Ventnor Gardens to avoid such effects.

24. These findings are based on the particular relationships between the proposed building and the immediately surrounding dwellings. Those relationships are different for the outbuildings to the rear of 5 Ventnor Gardens and 6 to 12 Upney Lane cited by the appellant. Consequently, the cited outbuildings do not provide a robust justification for the appeal proposal.

#### *Living conditions – conclusion*

25. Overall, I find that the proposal would have a detrimental effect on the living conditions of the occupiers of Nos 28 and 26 Upney Lane by reason of noise and disturbance. It would also be harmful to the living conditions of the occupiers of No 28 due to loss of outlook and privacy and its overbearing effect. Consequently, the proposal would conflict with LP Policies D4 and D14, CS Policy CP3 and DPD Policies, BR13, BP8 and BP11. These policies seek to achieve a high standard of design and protect the living conditions of existing occupiers from adverse noise, outlook, overshadowing and privacy impacts. It would also conflict with Framework paragraph 135 which includes similar aims.
26. The third reason for refusal also cites conflict with LP Policy T4. However, this deals with the mitigation of transport effects and therefore is of little assistance in the consideration of the living conditions issue.

#### *Parking*

27. The appellant's Transport Statement includes assessments of the expected means of travel of potential attendees and the availability of on-street parking in the area. It finds that, notwithstanding local parking controls, sufficient parking capacity would be available to accommodate the number of people arriving by car. This is consistent with the observations from my site visit.
28. I note that the Council, while pointing to relatively poor public transport access, does not question the Statement's methodology or findings. While I recognise the concerns expressed locally regarding parking pressures, the available evidence indicates that the parking demand generated by the proposal could be accommodated locally without undue stress.
29. There is no substantive evidence to demonstrate that the proposal would cause traffic congestion.
30. Therefore, the proposal would not conflict with LP Policies T4 or T6, CS Policy CP3 or DPD Policies BR9, BR10, BR13, BP8 and BP11 insofar as they require proposals to make adequate provision for car parking, consider the parking and transport effects of proposals and achieve a high standard of inclusive design.
31. The fourth reason for refusal also cites conflict with LP Policy D14 and DPD Policy BR13. However, these deal with noise effects and I have already considered this matter.

#### *Other Matters*

32. I have had regard to the other concerns expressed locally, but none have led me to a different overall conclusion.

### **Planning Balance and Conclusion**

33. The proposal would have positive benefits in meeting a need for a community facility and would satisfy a locally expressed preference for it to be located at the appeal site. However, the need and catchment has not been sufficiently clearly defined, nor have alternative sites been adequately explored, to justify setting aside development plan policies which seek to locate such facilities in local centres. Furthermore, I have found that the proposal would have harmful effects on the character and appearance of the area and the living conditions of neighbouring occupiers. Although the proposal would not lead to undue parking stress, this is not sufficient to outweigh the other harms identified.
34. Consequently, material considerations do not indicate that the appeal should be determined other than in accordance with development plan policies. Therefore, the appeal should be dismissed.

*Simon Warder*

INSPECTOR