



Appeal Decision

Site visit made on 8 February 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2024

Appeal Ref: APP/B5480/W/23/3324488

67-71 Victoria Road, Romford RM1 2LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Victoria Road Romford Limited against the decision of the Council of the London Borough of Havering.
 - The application Ref is P0487.23.
 - The development proposed is the demolition of existing buildings and redevelopment of site to provide 9 residential units (C3), including access works, car and cycle parking, refuse storage and amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 December 2023, the Government published its revised National Planning Policy Framework ('the Framework'). The Framework represents the Government's up-to-date planning policies for England and how they should be applied. I have had regard to the Framework in reaching my decision.
3. I am in receipt of amended plans from the plans considered by the Council. The amended plans show soft landscaping alongside Flat No.4; switching the locations of the single and double bedrooms within Flat No.5; and the incorporation of a glazing specification to the bedroom of Flat No.4 and kitchen windows for Flats Nos. 6 and 8.
4. As these are minor amendments, and the Council's concerns on the original set of plans are clear in their evidence, I do not consider that their interests or those of any interested parties would be prejudiced if I take these amended plans into account. Therefore, having regard to the judgement in *Holborn Studios Ltd v The Council of the London Borough of Hackney* (2018), which refined the "Wheatcroft principles" set out in *Bernard Wheatcroft v Secretary of State for the Environment* (1982), I shall therefore determine the appeal on the basis of the amended plans.

Main Issues

5. The main issues are 1) the effect of the proposed development on the character and appearance of the area, 2) whether or not the proposed development would deliver acceptable living conditions for future occupants with regard to light, outlook and privacy, and 3) the effect of the proposed

development on the living conditions of occupants of surrounding residential properties with regard to daylight, sunlight and privacy.

Reasons

Character and appearance

6. The appeal site is located on the corner junction between Victoria Road and Mercury Gardens. It currently contains two storey properties which front onto Victoria Road which include a wedding shop and an aquatic pet centre. Behind these properties is a long single storey building and a large parking area. The site is bounded on one side by the A1251 (Mercury Gardens) which forms part of Romford Town Centre's orbital road. On the opposite side are residential properties of Corbridge Mews, including Jane Court flats. To the rear of the site is an elevated section of railway. The site is within very close proximity to Romford Town Centre.
7. The proposed development would involve the demolition of the existing buildings on site. It would then include the erection of a three-storey block of flats, comprising six units. This would be positioned on the Victoria Road frontage and would also extend along the side of the site fronting Mercury Gardens. To the rear of the site would be a terrace of 3no. two and a half-storey properties. The area of land between the two blocks would be communal and private amenity spaces and would also include a disabled parking space and areas for refuse and cycle storage.
8. The appeal site is in a visually, highly prominent position adjacent to one of Romford Town Centre's main roads. The slightly elevated nature of the site above the main road to the side increases its visual prominence.
9. The surrounding area contains a wide range of building designs of various scales and mass. On the north-west corner of the junction between Victoria Road and Mercury Gardens is a rather large block of flats which follows the curvature of the corner. This block has various four storey and three storey sections. Opposite the appeal site are two storey properties of a similar scale to those on the appeal site, and a purpose-built block of flats with two and three storey sections and roof level accommodation.
10. On the other section of Victoria Road, west of the junction leading to Romford Town Centre, are a range of buildings and uses including three and four storey buildings which include commercial units and residential flats.
11. The adjacent Corbridge Mews development contains 3no. three storey residential blocks on the Victoria Road frontage which drop to two storeys as they extend deeper into the site, where there are two storey dwellings along the rear, parallel with the railway line. The proposed development would take on a similar form and siting whereby a three storey block fronts onto Victoria Road and dwellinghouses are situated at the rear. The proposed site plan shows how the block of flats would follow a similar building line to the adjacent Jane Court, and the dwellinghouses would follow a similar building line to the dwellings to the rear of Corbridge Mews.
12. In the context of the surrounding built environment as described above, the scale and mass of the proposed development would not cause harm to the character and appearance of the area. Furthermore, the design approach, as

well-reasoned in the submitted Design and Access Statement, would ensure a high-quality scheme with a considered palette of materials and colours.

13. The Council's concerns in terms of character and appearance, also relate in particular to the rear block. The Council highlight the roof form and blank elevation as specific features of concern, in addition to the scale and bulk of this part of the development.
14. Although reference is made to this part of the development being three storeys, it is in fact two and a half stories high, with accommodation over three floors, with around half of the third floor being within the roof space. Although it would be of a greater scale than the properties to the rear of Corbridge Mews, the difference is not excessive, particularly bearing in mind that this section of the development will also be readily apparent from Mercury Gardens where there is a range of building heights and scales. Furthermore, its mass, or bulk, comprising three properties would not be out of character in the area of buildings of a significant variation in mass.
15. The design incorporates a half-hipped crown roof. Although such a feature is not readily apparent in the surrounding area, there are hipped roof properties in close proximity and a significant variation of roof forms in the wider surroundings. Therefore, whilst it would be an apparent different roof form, for these reasons, it would not cause harm.
16. The Council also consider that the largely blank side elevation facing towards Mercury Gardens causes harm and fails to positively contribute to the townscape. This elevation is broken by a first-floor window that offers some relief. The majority of the ground floor would not be visible. It is also salient that the side elevation would rarely be viewed in isolation, with most views also encompassing the more detailed front elevation or the proposed block of flats. Therefore, having regard to the scheme as a whole and its context, this would not cause harm.
17. Reference is also made to what the Council consider is a castellated effect created by the articulation in the height of the brickwork to the top floor sitting uncomfortably with the proposed dormer windows. The continuation of brickwork, however, emphasises the vertical proportions used elsewhere in the design and contributes to visually highlight the separation of the block into three properties. The approach adds an element of visual interest to the block and would not cause harm.
18. The proposed development therefore would not cause harm to the character and appearance of the area. It would comply with Policies 7 and 26 of the Havering Local Plan (2021) and Policy D6 of the London Plan (2021). Collectively, these policies require, amongst other things, that residential development is of high-quality design, respects and complements the distinctive qualities, identity and character of the site and the local area; provides creative and site-specific design solutions; and responds to distinctive local building forms and patterns of development having regard to the established scale, mass, building lines and heights of the surrounding physical context.
19. The proposed development would also comply with the requirement of the Framework that developments are of high-quality design, sympathetic to local character.

Living conditions – future occupants

20. The Council's concerns in relation to the living conditions for future occupants relates to the provision of satisfactory levels of outlook, light and privacy for the occupants of units 4 and 5 which are both proposed ground floor flats.
21. The concern in relation to unit 4 is in relation to the second bedroom. The window for this bedroom would be towards the proposed bin store which would be a purpose-built storage facility with closing doors as opposed to simply an area where the bins are left. I accept that the outlook would not be ideal, however, whilst the room would be a 'habitable room' it is of secondary significance to the provision of satisfactory outlook from the main living room. In this instance, when taken as a whole, the unit would have a good level of outlook towards the private and shared amenity space and would include secondary windows in the side elevation to provide additional light. Furthermore, the bedroom is the second of two bedrooms within the property. Therefore, having regard to the property as a whole, there would be satisfactory living conditions for future occupants in terms of light and outlook.
22. In terms of privacy, the window to bedroom 2 of unit 4 would be positioned on the side elevation adjacent to the access leading to the three dwellinghouses to the rear of the site. Since the original decision, the appellant has introduced some defensible planting and part obscured/part tinted glazing to the fenestration.
23. In terms of the impact from passers-by, this would be in relation to the residents of the three properties to the rear and any of their visitors. The passage could in no means be described as a potentially busy thoroughfare and there would likely be relatively low numbers of users. It is not wholly uncommon in dense urban environments that habitable rooms of dwellings are in close proximity to footpaths and passers-by. The addition of planting and part obscured/part tinted glazing would also serve to mitigate the impact.
24. Similarly, the impact on the unit from the upper floors of the adjacent Jane Court would be mitigated by the measures outlined above. This is in addition to the separation that would be maintained. It is not considered to result in unacceptable living conditions as a result.
25. Having regard to unit 5, the Council considered that there would be unacceptable outlook from the main bedroom. The appellant has subsequently amended the layout so that the main bedroom is at the front of the property and the smaller second bedroom is at the side. The window to the second bedroom would be very close to the boundary wall, a distance of 0.9m. The plans show, however, that only the lower half of the window would face directly towards the boundary wall, with the upper half being unaffected.
26. Having regard to this arrangement, and that it relates to the second of two bedrooms at the property, taking the property as a whole, there would not be unacceptable levels of outlook.
27. I therefore conclude that the proposed development would provide acceptable living conditions for future occupants in terms of light, outlook and privacy. It would comply with Policy 7 of the Havering Local Plan (2021) which seeks, amongst other things, to ensure developments achieve a high standard of amenity.

28. The proposed development would also comply with the requirement of the Framework that developments seek to ensure a high standard of amenity for future users.

Living conditions – occupants of existing properties

29. Much of the appeal site as existing is largely open and undeveloped. The buildings that are currently on the site comprise the two storey buildings to the Victoria Road frontage and the single storey building which extends deeper into the rear of the site. Given this existing arrangement, including the surrounding residential properties, the very nature of placing development of a greater scale and mass on the site will have an inevitable impact on the living conditions of occupants of surrounding properties in terms of daylight, sunlight and privacy when compared to the existing situation.
30. In the consideration of the impact on daylight and sunlight, the appellant has submitted a Daylight, Sunlight and Overshadowing Report¹.
31. The Council makes specific reference to the impact on one room at no. 1 Corbridge Mews which is the closest dwellinghouse to the proposed terrace of dwellinghouses at the rear of the site. This room is identified in the report as room R2/10 and contains windows referenced W2/10 and W3/10. I observed on my site visit that this property has a car port structure to the front which is likely to impact on existing levels of daylight and sunlight. The room in question has two windows. One in the main frontage elevation, and another in the side elevation. The evidence shows that the window to the front would be unaffected by the proposal. The side window would see a greater impact; however, the room as a whole would retain acceptable levels of daylight and sunlight with the report concluding that the overall impact to daylight and sunlight to this property is considered to be minor. This would not cause unacceptable harm.
32. The report sets out that the BRE recommendation is that for an amenity space to appear adequately sunlit throughout the year, at least 50% of the amenity area should receive at least two hours of direct sunlight on the 21st of March. The report also states that if the area that can receive two hours of direct sunlight on the 21st of March is less than this, then the area should not be reduced by more than 20% as a result of new development.
33. For no. 1 Corbridge Mews, 59% of the rear garden currently receives more than 2 hours of direct sunlight on 21st of March. The evidence shows that following the development, 25% of the rear garden would receive more than 2 hours of direct sunlight on the 21st of March. As a result, following the development, the rear garden would receive sunlight at levels below the BRE recommendation.
34. I acknowledge that in planning decisions, the BRE guide is advisory, and it is not an instrument of planning policy nor is it mandatory. It is, however, recognised as the principal guidance when considering daylight, sunlight and overshadowing and is an appropriate method to use when considering the implications of a proposed development. Principally, the aim of the guide is to ensure good conditions in the local environment.

¹ Reference V1 R1 P3295 – March 2023 – Point 2 Surveyors Limited

35. In this case, the overshadowing of the rear garden of no. 1 Corbridge Mews represents a significant and substantial reduction in the amount of sunlight received in the property's main area of amenity space. It is pertinent that the existing properties pre-date the proposed development and residents will have become accustomed to their current living conditions, with the harmful impact resulting in a sense of imposition. I acknowledge, as the appellant highlights, that due to the existing open aspect to the west over the current site there would be an inevitable reduction in sunlight as a result of development. I accept that some reduction as a result of development may still maintain acceptable living conditions. However, in this case, the scale and the bulk of the development at this part of the site are fundamentally the contributing factors that are responsible for the significant reduction that would occur, which would be greater than 50% of the current area that receives more than 2 hours of direct sunlight.
36. The appellant also highlights that the property would maintain excellent direct sunlight on the supplementary testing time of June 21st, when these spaces will be used most frequently by residents. Whilst this may be the case, it does not provide sufficient justification for the impact at other times of the year when residents are also entitled to enjoy their amenity space.
37. In terms of the impact on daylight and sunlight to the properties of Jane Court, these are also considered in the report. The assessment includes the floor plans for these units. The block comprises 10 units, of which 7 have windows overlooking the appeal site. The floor plans show that none of the windows directly facing the appeal site are living room windows. The windows which overlook the appeal site and are affected by the development serve small kitchens and bedrooms.
38. Having regard to the small kitchens, my attention is drawn to the Mayor of London Housing Supplementary Planning Guidance (2016) which sets out that there is no statutory definition for kitchens to be counted as a habitable room, nor is there any statutory size threshold. It identifies that many boroughs, however, include a figure of between 13 and 15 square metres, and that any kitchen above that minimum is usually counted as a habitable room. In the Jane Court properties, the evidence shows that the kitchens are well-below this threshold. I therefore do not consider that the impact on them is unacceptable, as these are not primary habitable rooms.
39. The Council's assessment draws specifically on the impact in relation to units 7 to 10. There are 6 windows that are affected by the proposed development. Four of these are kitchen windows which I have considered above. The other two are bedroom windows to the main bedroom and are identified as rooms R5/20 and R5/21. In each case the window is a bay window with three faces W5/W6/W7. The report acknowledges that there would be a reduction in daylight and sunlight to these rooms as a result of the development.
40. Having regard to the overall layout of the units and the findings of the report, I consider that the units would retain acceptable levels of daylight and sunlight. Having regard to the language in Policy 7 of the local plan, whilst there would be a minor element of harm, for the reasons given, it would not be of a level that would constitute unacceptable harm.
41. In terms of privacy, the Council's concern relates to the proximity of habitable room windows in the proposed development to those in Jane Court. In the

amended plans, the appellant has shown the proposed installation of obscure glazing in the flank windows of the first and second floor elevations. These are secondary windows to these rooms. The suggestion would adequately overcome the Council's initial concerns so that there would not be an unacceptable impact in relation to overlooking.

42. Therefore, on the matter of living conditions, I do not find that there would be unacceptable harm to living conditions in relation to daylight, sunlight and privacy to rooms of surrounding dwellings. I do, however, find that there would be significant and unacceptable harm to the living conditions of the occupants of no. 1 Corbridge Mews due to loss of sunlight and overshadowing to the rear garden. The proposed development would therefore be contrary to Policy 7 of the Havering Local Plan (2021) which requires that development proposals do not result in unacceptable overshadowing or loss of sunlight.

Other Matters

43. The proposal would deliver housing on a site that is in a sustainable location on previously developed land. It would result in an increase in the Council's overall housing number. It would also bring a number of additional residents to the area who would contribute to the local economy. These are benefits that weigh strongly in favour of the appeal.
44. I have nevertheless identified that it would conflict with the policy designed to ensure there is not unacceptable harm to living conditions. This policy is consistent with the aims of the Framework in terms of ensuring good standards of amenity. This alignment increases the weight given to the policy conflict. Therefore, the conflict with this policy results in the development conflicting with the development plan when taken as a whole.
45. Paragraph 11 (d) of the Framework requires that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, developments should be granted planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
46. This applies to applications involving the provision of housing in situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The Council are unable to demonstrate a five-year supply of deliverable housing sites. It therefore follows that paragraph 11 d) of the Framework is engaged.
47. In terms of the proposed development, the starting point is therefore that permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits.
48. In this case the adverse impacts of the proposal in terms of the harm to the living conditions of existing occupants of nearby residential properties, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. These policies include a requirement for developments to provide a high standard of amenity for existing users.
49. The proposal does not therefore benefit from the presumption in favour of sustainable development given by paragraph 11 of the Framework.

50. The Council refused planning permission for, amongst other things, the absence of a legal agreement to secure measures to ensure the development was 'car-free'. The appellant has submitted a Unilateral Undertaking (UU) that includes a commitment that the development shall constitute car-free development.
51. It is necessary that I consider this obligation against the three tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. I am satisfied that the commitment that the development constitutes a car free development would be necessary to make the development acceptable in planning terms. Furthermore, it would be directly related, and fairly and reasonably related in scale and kind, to the development proposed. The obligation therefore meets the relevant tests. I have therefore attached weight to it in reaching my decision.
52. In reference to the Council's fourth reason for refusal, I consider that the UU would therefore secure the requirement that the development is 'car-free'. The Council have commented that they consider the deed to be acceptable.
53. I note that many representations have been received in relation to the loss of the commercial units. Whilst it is evident that the businesses are much-valued locally, there is no sound planning basis to withhold granting planning permission due to their loss, something which the Council also observed in their assessment of the application.

Conclusion

54. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 outlines that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
55. The outcome of the Framework paragraph 11 d) process above indicates that the decision should be taken in accordance with the development plan.
56. The proposed development would result in an increase in the Council's overall housing number and would be in a sustainable location on previously developed land. It would also bring a number of additional residents to the area who would contribute to the local economy. When combined with the Council being unable to demonstrate a five-year housing land supply, collectively, I give these matters significant weight in favour of the proposed development.
57. However, the harm that I have identified that would be caused to the living conditions of occupants of existing residential properties attracts greater significant weight that outweighs the benefits associated with the proposed development.
58. The proposed development would therefore conflict with the development plan and there are no identified other considerations, including the Framework, that outweigh this conflict.
59. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR