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# Appeal Decision

Site visit made on 27 November 2023

**by L Reid BSc (Hons) MA MRTPI**

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

**Decision date: 15 March 2024**

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## **Appeal Ref: APP/B5480/W/23/3321558**

### **63B Station Road, Upminster RM14 2SU**

- 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 Mr Gareth Tungatt against the decision of the Council of the London Borough of Havering.
  - The application Ref is P1590.22.
  - The development proposed is change of use from Class E Offices to C3 Dwellings, conversion of existing property into two x two bed apartments and the formation of an additional storey to create a third two-bedroom apartment, with elevational alterations including the formation of balconies.
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## **Decision**

1. The appeal is dismissed.

## **Preliminary Matters**

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023, updated 20 December 2023. In the interests of natural justice, both main parties have had the opportunity to make representation. In reaching my decision I have had regard to the revised Framework.

## **Main Issues**

3. The main issues are:
  - Whether the design of the proposed building would provide acceptable living conditions for future occupiers with regard to noise, amenity space, daylight and outlook;
  - The effect on the living conditions of the neighbouring occupants at 61, 63 and 65 Station Road and Alder Court having regard to loss of privacy; and,
  - Whether a planning obligation is necessary to restrict future occupiers from obtaining on-street residents parking permits.

## **Reasons**

### *Living conditions for future occupiers*

4. The appeal site is located in a district centre with a mix of residential and commercial uses. It is also near to a railway line. Policy D13 of the London Plan 2021 (the LP) sets out the 'Agent of Change' principle which places the responsibility for mitigating impacts from existing noise on the proposed new noise-sensitive development. I understand that the Council are concerned about further residential development near an existing noise-generating

premises which is subject to noise complaints. However, there is no substantive evidence before me to show that the impacts on living conditions for future occupiers of the proposed flats would be so great to warrant resisting the proposal on the agent of change principle.

5. Whilst I recognise the proximity of the appeal site to potential noise sources, I am not persuaded that an assessment of the potential impact from these nearby noise sources and appropriate mitigation measures is required prior to determination. If the appeal were to succeed, then these details could be required as a pre-commencement condition to ensure that noise would be mitigated to avoid a significant impact on the quality of life of future occupiers, in line with the aims of Policies D13 and D14 of the LP and Policy 7 of the Havering Local Plan 2021 (the HLP).
6. In terms of the useability of the balconies for Units 2 and 3, I accept that they would be directly adjacent to the existing trees which line the railway. However, even when the trees are in full foliage, which would only be for part of the year, there would be glimpses of light due to the density of the vegetation. As such, some light would be received by the balconies and would therefore not render them unusable.
7. Regardless of the site location, amongst other things, Policy D6 of the LP requires private amenity space to have a minimum depth of 1.5m. According to the Council's measurements, the width of the amenity space for Unit 1 would range from 0.2m – 2.3m. The appellant has not disputed these measurements, and I have no reason to do so. Some of the amenity space would therefore not meet the minimum size requirement. It would have an awkward shape and would be very narrow at points which would reduce the amount of useable space and its functionality. If a future occupier could not use the stairs, they would not be able to rely upon the communal rooftop terrace to meet their day-to-day needs. The amenity space would therefore be inadequate.
8. There is dispute between the parties regarding whether the proposed flats would be single or dual aspect. My attention has not been drawn to any definition in policy. Whilst I recognise the constraints of the site, each flat would only have openable and clear windows and doors on one side. The obscurely glazed windows in the front elevation would provide little opportunity to look outwards and it is not clear if these windows would be openable. Given that the opportunities for outlook, light and ventilation would be from one elevation, the flats would be single aspect.
9. The main windows for Unit 1 would look out onto the enclosed amenity space. Views would be directly towards the site boundary at very close quarters. This would therefore severely restrict the outlook. In Units 2 and 3, windows for the living area and Bedroom 2 would look out onto the balcony areas, which would be close to the trees. The trees would also be near the windows for Bedroom 1 in each of these flats. Notwithstanding that the level of foliage would change over the year, the views from these windows would also be restricted.
10. All forms of outlook from each of the flats would therefore be limited and restricted in some way. None of the flats would benefit from any windows which would have clear and unrestricted views. The flats would therefore have a poor outlook. Given the constraints on these windows and in the absence of evidence of expected daylight levels in these proposed habitable rooms, I cannot be certain that there would be acceptable levels of light.

11. My attention has been drawn to the flats on the other side of the railway line. At my site visit, I saw that the building is separated from the railway trees by the adjacent footpath. It is therefore not a direct comparison to the relationship that the proposed building would have with the adjacent trees.
12. Although I have found no harm regarding noise, the harm identified would arise due to the relationship with the boundary treatment and adjacent trees, the restricted opportunities for daylight and outlook and the lack of useable amenity space for Unit 1. Future occupiers would not be provided with the high standard of amenity considered appropriate for new residential accommodation, to which I give significant weight.
13. The design of the proposed building would therefore not provide acceptable living conditions for future occupiers with regards to amenity space and outlook. Insufficient information has also been submitted to demonstrate that there would be acceptable levels of daylight. This conflicts with Policies 7 and 26 of the HLP, Policy D6 of the LP and paragraph 135 of the Framework. Amongst other things, these policies seek residential development that does not result in an unacceptable outlook, maximises the provision of dual aspect dwellings with sufficient daylight and has usable outside amenity space to provide a living environment with a high standard of amenity for existing and future users.

*Living conditions of the occupants of 61, 63 and 65 Station Road and Alder Court*

14. At my site visit, I saw that the windows of the flats at 61, 63 and 65 Station Road can be seen from the appeal site. Given the tightly knit built-up context of the area, some overlooking is a common characteristic of the relationship between adjacent buildings.
15. I recognise that when standing on the proposed roof terrace it would be possible to see above some parts of the balustrade. The Council has indicated that there would be a distance of approx. 11m from the roof terrace to the opposite windows. Given this intervening distance and that the roof terrace would be set back from the front of the building, any views would be unlikely to be close enough to allow users of the roof terrace to see directly into these windows. Taking account of the existing relationship, the distance and the setback design, my view is that the perception of overlooking would be minimal.
16. Whilst not referenced in the reason for refusal, in the Council's Officer Report concerns are also raised over overlooking to the flats to the south of the appeal site. The nearest properties in this direction are at Alder Court. The roof terrace would be set in from the side of the building and would also be located some distance from the windowed elevations of these flats. I am therefore satisfied that any views towards these windows would be far enough away to not significantly compromise the privacy enjoyed by the respective occupiers.
17. Drawing the above points together, I therefore find that the proposal would not have a harmful effect on the living conditions of nearby occupants having regard to loss of privacy. Accordingly, the proposal complies with Policy 7 of the LP which amongst other things, seeks development that does not result in unacceptable overlooking or loss of privacy.

### *Planning obligation*

18. In the Council's Officer Report, it is stated that there does not appear to be any resident parking zones within the vicinity of the appeal site to require a legal obligation. However, one of the reasons for refusal was then on the grounds of the absence of a suitable mechanism to prevent future occupiers from obtaining on-street parking permits. The Council's position on the requirement for a planning obligation to secure the development as parking permit-free is therefore unclear.
19. The proposed development would be car-free with cycle parking provision. The appeal site has good access to services and public transport so future occupiers would be unlikely to need a car and the lack of on-street parking would place a natural restriction on car ownership.
20. There is no substantive evidence before me to understand which parking zones would be affected or that issuing parking permits to future occupants would cause harm to the parking in surrounding streets. Accordingly, I cannot be certain that a planning obligation would be necessary to make the development acceptable or that it would be directly related to the development and fairly and reasonably related in scale and kind. Consequently, and notwithstanding the aims of Policy 24 of the LP, I am unable to conclude that a planning obligation seeking to prevent future occupiers from obtaining on-street parking permits would comply with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework. In these circumstances, the absence of a planning obligation does not weigh against the development.

### **Other Matters**

21. Prior approval was previously granted for the conversion of the existing building into two flats on 15 February 2021<sup>1</sup>. The prior approval scheme was permitted to be completed within a period of three years starting with the prior approval date. As this period has now passed, and there is no substantive evidence before me that this development has been completed, the approval is no longer extant.
22. I accept the proposal provides larger flats and amenity space for the upper floor flats when compared with the prior approval scheme. However, the prior approval scheme included a semi-covered courtyard which would be larger and wider than the amenity space proposed on the ground floor. The prior approval scheme was dual aspect, with clearly glazed windows and doors in the front and side elevation with greater separation from the railway trees, which would allow for both outlook and light.
23. Even if the prior approval scheme was extant, when taken as a whole, the living conditions provided for future occupiers under this proposal would be more harmful than those provided under the prior approval scheme. This therefore limits the weight I give to the prior approval scheme as a fall-back position.
24. There are no objections on the grounds of the size of the proposed flats, floor-to-ceiling heights and circulation space. However, compliance with relevant

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<sup>1</sup> Council ref: J0050.20

national and local planning policies on these matters would be required in any case. These matters therefore do not weigh in favour of the proposal.

25. The proposed building would also be of a higher quality than the existing one. However, this would be expected for any replacement building and is therefore of neutral weight in this appeal.

### **Planning Balance and Conclusion**

26. The Council cannot currently demonstrate a five year housing land supply. Therefore, in accordance with the provisions of paragraph 11 d) ii. and footnote 8 of the Framework, permission should be granted, 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.
27. As I have identified conflict with Policies 7 and 26 of the HLP and Policy D6 of the LP, the proposal conflicts with the development plan as a whole. These policies are consistent with the Framework in seeking to ensure development provides a high standard of amenity for future users. I apportion significant weight to the conflict with these policies and to the associated harm.
28. The proposal would be supported by parts of the Framework with regard to the efficient use of land in meeting the need for homes with accessible services. It would provide a net gain of three new dwellings, with one more additional home than the previous prior approval. Whilst this attracts moderate weight, the additional housing would make a minor contribution to the overall supply of housing.
29. There would also be social and economic benefits arising from the construction phase and future occupiers would bring some trade to nearby shops and services. However, these benefits attract limited weight in the overall balance, given the scale of development under consideration.
30. When assessed against the policies in the Framework taken as a whole, the significant adverse impacts of providing unacceptable living conditions for future occupiers would significantly and demonstrably outweigh the scheme's benefits. As a result, the presumption in favour of sustainable development does not form a consideration of such materiality that it indicates that a decision should be made other than in accordance with the development plan.
31. The proposal would conflict with the development plan, read as a whole. There are no other material considerations, including the provisions of the Framework, that have been shown to carry sufficient weight to indicate a decision otherwise than in accordance with it.
32. For the foregoing reasons, the appeal is dismissed.

*L Reid*

INSPECTOR