
Appeal Decision

Site visit made on 5 March 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2024

Appeal Ref: APP/Z5060/W/23/3321301

Rear of 70 High Road, Chadwell Heath RM6 6PP

- 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 J Batth against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application Ref is 23/00126/FULL.
 - The development proposed is the construction of two storey building incorporating two self-contained flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Whilst acknowledging that planning permission for development on the adjoining site (permitted development) remains extant, the appellant suggests that it may not be carried out. However, there is nothing before me that demonstrates that there is no realistic prospect of the extant planning permission being implemented. Consequently, the relationship of the appeal proposal to that development is a significant material consideration. I have determined the appeal on that basis.
3. The Council has cited Policies SP2, DMD1 and DMD6 of the Draft Local Plan 2037 (Regulation 19 Submission Version, December 2021) (DLP) in its decision. The DLP is currently at examination stage. However, no details or evidence regarding these policies, such as whether there are any unresolved objections, has been provided. Accordingly, I attribute them limited weight and have determined the appeal based on the cited policies of the London Plan, the Core Strategy (CS), and Borough Wide Development Policies Development Plan Document (DPD).
4. A copy of the Residential Extensions and Alterations Supplementary Planning Document, that has also been cited in the Council's decision, has not been provided with the appeal documents. However, the proposed development does not involve an extension or alterations, and as such it appears that this document is not directly relevant to the appeal proposal. Even if the document had been provided, it would have made no difference to the appeal outcome, for the reasons I shall set out below.
5. The Government published a revised National Planning Policy Framework (the Framework) in December 2023. However, as the parts of the Framework most relevant to this appeal have not significantly changed there is no requirement

for me to seek further submissions on this latest version. I am satisfied no party would be prejudiced by determining the appeal accordingly.

Main Issue

6. The main issue is the effect of the proposal on the living conditions of the future occupants of the permitted development on the neighbouring land, with particular regard to outlook and light.

Reasons

7. The permitted development would be sited in a position close to the common boundary with the appeal site and would include a small patio area directly adjoining, serving Flat 5, overlooked by windows of Flats 5, 6 and 10. The appeal proposal would introduce a detached two storey building that would extend along part of the patio area.
8. The shadow cast by the proposal in combination with the permitted development would mean that the patio area and the windows that look onto it, would not receive sunlight and daylight until late afternoon. Consequently, several habitable rooms in the permitted development within Flats 5, 6 and 10 would receive limited natural light and exposure to sunlight. Such rooms and the patio would therefore be unacceptably dark and gloomy spaces, particularly in winter when the days are much shorter.
9. Due to the scale and proximity of the proposed building it would have a substantial enclosing and dominating effect on the patio and the outlook from habitable rooms of Flats 5, 6 and 10 of the permitted development. Consequently, the proposal would also create an unacceptable visual intrusion which would be detrimental to the enjoyment of the patio, and unacceptably affect the outlook from such windows.
10. The proposed development does not breach the 45 degree 'simple rule of thumb' test as measured by the appellant. However, it does not automatically follow that an absence of a breach means that a development does not unacceptably harm the living conditions of occupiers of adjacent properties.
11. I acknowledge that a relatively small part of the permitted development would be affected by the appeal proposal. However, even if most of the occupants of that development would be unaffected, the harm that I have found is unacceptable. Furthermore, whilst minor revisions may address such harm, there is no mechanism before me that would secure amendments to the permitted development.
12. Accordingly, I conclude that adequate living conditions would not be provided for the future occupants of the permitted development on the neighbouring land, with regard to outlook and light. Therefore, the proposal does not accord with Policy D4 of the London Plan, CS Policy CP3, and DPD Policies BP8 and BP11. Such policies, amongst other matters, seek to protect amenity and ensure a high-quality built environment. It would also be contrary to the aims of the Framework to promote health and well-being, with a high standard of amenity for existing and future users.

Conclusion

13. The development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.

14. I therefore conclude that the appeal should be dismissed.

Elaine Moulton

INSPECTOR