



Appeal Decision

Site visit made on 9 April 2024

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date 23 April 2024

Appeal Ref: APP/U5930/W/23/3319159

257-259 Chingford Mount Road, Chingford, London E4 8LP

- 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 Anthony Lungo against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 223007, dated 17 October 2022, was refused by notice dated 18 January 2023.
 - The development proposed is described as: *"First floor rear extension, alterations to elevations, new and re-located a/c units, erect roof mounted solar panels, create four self contained flats, and create roof terrace areas with external staircase"*.
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Decision

1. The appeal is allowed and planning permission is granted, for a first floor rear extension, alterations to the elevations, new and re-located air-conditioning units, the erection of roof mounted solar panels, and the creation of four self-contained flats and roof terrace areas with external staircase, at 257-259 Chingford Mount Road, Chingford, London E4 8LP, in accordance with the application Ref 223007, dated 17 October 2022, subject to the conditions set out in the attached schedule.

Preliminary matters

2. In the Council's submissions, it is said that the appeal premises have been under investigation since 2018, in relation to possible breaches of planning control, although no formal enforcement action has been taken. With regard to the building itself, the Council appears to accept that the physical extensions carried out are now immune, due to the passage of time. Rather, the Council's concerns appear to focus on the building's use, and in particular the number of separate units that have been created by its subdivision. However, this would change in the present appeal scheme, and the Council has made clear that it has no in-principle objection to a residential use as such. In the circumstances, I have dealt with the appeal proposals on their merits.
3. The submitted plans indicate the re-configuration of the first floor of the building, and a small roof-top extension at the same level, to form four self-contained flats. These would comprise one 3-bedroom unit, one 2-bedroom, one single-bedroom and one studio unit. On the ground floor, the plans indicate that this would remain broadly as existing, as retail space, a vehicular garage, and one further single-bedroom flat. The appellant and the Council both appear to have treated the proposal as relating to the four flats at first

floor level, numbered Flats 2-5 on the submitted plans, and not the ground floor unit. I have dealt with the appeal on the same basis.

4. On my site visit, construction works were in progress at the site. However I was able to get access to most parts of the building, and I am satisfied that I was able to see all that was necessary to enable me to determine the appeal. Given the stage that those construction works had reached, it was not possible to ascertain whether, or to what extent, the works in progress correspond fully with the appeal proposals. But neither was this necessary, because the appeal has to be determined on the basis of the submitted plans. In any event, I have dealt with the appeal based on the plans that are before me.

Policy background

5. In February 2024, the Waltham Forest Local Plan (the WFLP) was adopted and came into force as part of the development plan for the area, superseding the policies of the 2012 Core Strategy and 2103 Development Management Policies. The parties have been given an opportunity to draw my attention to any relevant new policies, and to comment on their effect on the appeal. I have taken account of the responses received.
6. Amongst other relevant policies, the appeal site lies within the South Chingford District Centre, and also within the Chingford Mount Strategic Location, where WFLP Policies 4 and 12 seek to focus new development and regeneration, and to maximise opportunities to increase the supply of homes.

Main issues

7. In the light of all the submissions made, I consider that the main issues in the appeal are as follows:
 - whether the proposed development would provide acceptable living conditions for its future occupiers, with regard to daylight, outlook, headroom, amenity space, and access;
 - whether the development would prejudice any future development on neighbouring sites;
 - whether the proposed arrangements for refuse storage and collection would be acceptable;
 - and the development's effects on car parking in the area.

Reasons for decision

Living conditions

Daylight and outlook

8. The concerns raised by the Council with regard to daylight and outlook relate to Flats Nos 3 and 4. In Flat 3, the two bedrooms would each have a single window, onto a north-facing lightwell area. A short distance beyond this is the side wall of the next-door property. In Flat 4, the bedroom window would look onto an alleyway between the appeal premises and another neighbouring building. In all of these cases, both the level of daylight and the outlook from the windows in question would be somewhat restricted. I note that WFLP Policy 57 seeks, amongst other things, to avoid harmful impacts on future occupiers, including in terms of daylight and outlook, and London Plan Policy D6 requires sufficient daylight in all new developments, appropriate to their

context. Living conditions in the bedrooms of Flats 3 and 4 would therefore fall short of the standards which are sought by the relevant development plan policies.

9. However, these shortcomings have to be balanced against the fact that the appeal building already exists, and it would not be desirable for it to be under-used. In the present scheme, the living rooms and kitchen/dining areas of both Flats 3 and 4 would receive more than adequate light, and would all have an unobstructed and reasonably pleasant outlook. And notwithstanding the shortcomings that I have identified in relation to the bedrooms in these two flats, there is no evidence that any alternative layout could be devised that would avoid the need to use these rooms and windows for habitable accommodation. Furthermore, the layout now proposed would appear to offer a better standard of accommodation overall than the existing situation, albeit that the latter is said to be unauthorised.
10. On balance therefore, I consider that living conditions in Flats 3 and 4 would be acceptable. In the case of Flats 2 and 5, it is not disputed that good standards of light and outlook would be achieved, and I see no reason to disagree. In this regard therefore, I find no conflict with WFLP Policy 57, or with London Plan Policy D6, or any other development plan policy that I am aware of.

Headroom

11. In Flats 3-5, the floor-to-ceiling height would be less than the 2.5m, for 75% of the gross internal area, which is sought by Policy D6 of the London Plan, published in March 2021. I note that this is said to be desirable to combat overheating, and to improve the quality and sense of space in new housing.
12. In the appeal scheme however, Flats 3-5 are located within the existing building, where the ceiling heights are dictated by the existing structure, and are not proposed to change. Any raising of these ceilings would clearly require extensive physical alterations. There is no evidence that any such works would be either technically feasible or economically viable.
13. There is no disagreement that the headroom available in Flats 3-5 would meet the Nationally Described Space Standards requirement of 2.3m. Nor is it disputed that Flat 2 would comply fully with the London Plan requirement in any event.
14. From my observations on my visit, it appears to me that all of the proposed units would provide a comfortable amount of headroom, and an adequate quality of accommodation in this regard. To my mind, despite the partial conflict with this element of Policy D6, the ceiling heights in the proposed scheme would be acceptable in terms of living conditions.

Amenity space

15. Flats 3-5 would lack any private outdoor amenity space of their own, and would thus fail to comply with WFLP Policy 56, and also with London Plan Policy D6. Although these three units would share a roof terrace, and Policy 56 allows for part of the requirement to be met through communal space, in this case the shared space would be somewhat smaller than that policy's minimum size of 50 sq m.
16. However, the shared roof terrace would have a convenient rectangular shape, and good natural lighting, and thus would lend itself to a range of uses. It would also be capable of accommodating some landscaping, in planters. The

space would benefit from natural surveillance from surrounding properties, including Flat 2. The terrace would be some 30-40m from the three residential units whose occupiers would use it, but to my mind this would not be an unusual distance compared to many other apartment blocks. Access would require the use of stairs, but the same would apply to the flats themselves, and thus would not be likely to hinder use by the occupiers. To my mind, this communal amenity space would provide a useable facility for Flats 3-5, and would represent a reasonable level of provision for those units on a site of this type.

17. Flat 2 would have its own private terrace, of around 4m x 3m. This would appear to satisfy the requirement under Policy 56. In this regard, I appreciate that, prior to the adoption of the WFLP, the equivalent policy in the previous local plan was more demanding, in that it sought 10 sq m per bedroom rather than per dwelling. But that policy is no longer in force, and thus now carries no weight.
18. Having regard to the nature of the site and the existing building, it is clear that there are limits as to the amount of amenity space that can realistically be achieved. There is no evidence that any alternative scheme would be able to improve on the present proposals in this regard. In these circumstances, despite the inability of the appeal scheme to satisfy Policy 56 in full, it seems to me that the level of amenity space proposed would be acceptable.

Access

19. The pedestrian access to all of the proposed flats would be via an alley way which passes under an arch and then between buildings. For access to Flat 2, it would also be necessary to go to the end of the alley and up a flight of external stairs. At present, the alley is poorly lit, unsurveilled, and open to unauthorised entry. In its existing condition, I agree that this arrangement is likely to be perceived as unsafe and intimidating, and gives rise to a potential risk to the security of users.
20. However, conditions are suggested by the Council with regard to lighting and CCTV. The appellant appears to agree with these, and has also expressed willingness to install some form of controlled access gate system. I am therefore satisfied that these features, or some combination of them, would be capable of making the existing access route safe, in accordance with WFLP Policy 53 which seeks to encourage high quality design.

Conclusion with regard to living conditions

21. For the reasons set out above, I conclude that the proposed development would provide acceptable living conditions for its future occupiers, in terms of daylight, outlook, headroom, amenity space and access. In these respects it would meet the requirements of WFLP Policies 53, 56 and 57. With regard to headroom, the scheme would fail to comply with London Plan Policy D6, but in the circumstances of the particular site, this does not alter my conclusion that living conditions would be acceptable.

Effect on future development of neighbouring sites

22. The windows of proposed Flats 2 and 3, in the south side elevation, would face the rear yard of the adjoining property, No 255 Chingford Mount Road. The Council's concern appears to be that the need to protect the privacy and light to these windows could inhibit any future extension or redevelopment that

might be proposed at No 255. I agree that, if such development were to be proposed, these potential impacts on the appeal site would clearly have to be considered, and these might have some consequential effect on the form of development that would be acceptable on the adjoining land.

23. However, the windows in question already exist, and as already noted, the Council has accepted that the building of which they form part is immune from any enforcement measures. As far as I can tell, it would not appear to be realistic to think that this existing building could somehow be used or reconfigured so as not to need windows in the south elevation; and as far as I am aware, the Council does not suggest otherwise.
24. It follows in my view that these existing first floor windows, overlooking No 255's yard, have effectively become a permanent feature, irrespective of the outcome of the present appeal. This appeal can therefore have no significant effect, prejudicial or otherwise, on the prospects for any future development at No 255.
25. I note that Policy CS1 of the previous local plan sought to ensure that opportunities for development and regeneration were capitalised upon. However, that policy is now superseded, and there is no evidence regarding any equivalent policy that may have replaced it. And in any event, there is no evidence that any development at No 255 would be likely to come forward. Whereas, the development now proposed at the appeal site has evidently already started, and there seems no reason to doubt that it will be completed if permission is granted. Consequently, in so far as the objectives behind Policy CS1 may still have any relevance, it seems to me that the appeal scheme represents a 'bird in the hand', in contrast to the apparently rather uncertain prospects for any development on the adjoining land. In any event, am not aware of any conflict in this regard with any relevant or up-to-date development plan policies.
26. For these several reasons, I am not persuaded that the effect on any future development at No 255 Chingford Mount Road would be so prejudicial, or so significant, as to warrant the refusal of permission for the present appeal scheme.

Refuse storage and collection

27. It is proposed that refuse and recycling bins be kept in a designated store, to be provided at the rear of the site. The Council's objection is that the positioning of this would exceed the 'drag distance' over which waste collection teams are expected to move such bins. However, the appellant states that the proposals would merely continue the existing arrangements, whereby refuse is stored towards the rear and brought forward in bags, on collection days, by the occupiers.
28. There is little else by way of evidence on either side. From my observations on site, it is apparent that the options for the location of any storage facility are very limited. From an environmental point of view, it is clearly preferable that bins be stored away from the building entrances and accessways if possible. Viewed in this light, the proposed location at the rear of the site seems clearly the most obvious choice. No other suitable alternatives have been suggested, and none are apparent.

29. The basis for the Council's preferred maximum drag distance is not stated. I appreciate that the Council will wish to have such guidelines, for reasons of efficiency, but it seems likely that accommodations must sometimes have to be made for existing situations such as the present appeal site.
30. I note the Council's reference to various policies, but these are all from the previous local plan, which is now superseded. In the new WFLP, Policy 53 refers to the need to incorporate design measures for waste management, but this is for reasons of resilience to climate change, which seems unrelated to the present case. I have no information regarding any other relevant, up-to-date policies.
31. I conclude that the appeal scheme makes provision for refuse storage that appears to me appropriate in the circumstances of the appeal site. In this regard I again find no conflict with any development plan policies.

Parking

32. The proposed scheme would provide no parking spaces for the occupiers of the first floor flats. The Council's concern relates to the effects on parking in nearby streets. This concern is said to be supported by the Council's highways department, although no further information in this regard has been made available.
33. In the WFLP, Policy 66 states that, in order to encourage active and sustainable transport, and to improve air quality and well-being, all new residential developments in the borough should be car-free. To this extent, the appeal proposal would accord with Policy 66. In addition however, the policy also states that, where a Controlled Parking Zone (CPZ) scheme is in place, a legal agreement will be sought, to restrict new residents from obtaining parking permits; or alternatively, where there is no existing CPZ, a similar agreement will be sought in order to establish such a zone. In the present case, the appeal site lies outside of any CPZ, and no obligation has been entered into with regard to setting up a CPZ. The terms of Policy 66 would imply that permission should not be granted without such an obligation. In this respect therefore, the appeal proposal is contrary to Policy 66.
34. But nevertheless, in this case the proposal is for a relatively small development, which would be likely to have at most only a small impact on the demand for parking space in the area. In contrast, any new CPZ would clearly affect a large number of existing residents over a wide area, and thus would have a substantial impact. There is no evidence that the area suffers from parking stress. In these circumstances, it seems to me questionable whether the introduction of a CPZ, simply to mitigate the impact of a single development, would be a proportionate or justified course of action. In addition, Traffic Orders would be needed, and would be likely to be subject to public consultation; a CPZ might not necessarily be welcomed by all, and thus there can be no certainty that such a process would necessarily succeed.
35. In addition, the site is located in a sizeable district centre, with a number of bus services close by, and a PTAL rating of 3. A good range of shops and local facilities is available within the immediate vicinity. The location is therefore one which would facilitate a car-free lifestyle for those who wished it.

36. In the light of all the above it seems to me that, despite the partial conflict with WFLP Policy 66, the proposed development would be unlikely to have any significant adverse effects on car parking in the area.

Other matters

37. The Council states that the appeal site falls within a 6.2km 'zone of influence' around the Epping Forest Special Area of Conservation (SAC), where development is considered to have the potential add to the level of recreational use of the SAC. Although not included in the Council's reasons for refusal, it is suggested that this potential for an adverse impact on the SAC gives rise to a need for appropriate assessment under the Habitats Regulations.
38. However, in the present case the basis for this suggestion is not clear. The site is evidently well outside the designated area of the SAC itself, and thus the development would clearly have no direct physical effect upon that protected area. As far as the zone of influence is concerned, that zone does not form part of the area formally delineated by means of legislation, and nor is there any evidence of any relevant development plan policy relating to it. In the absence of any further explanation therefore, it has not been demonstrated that an appropriate assessment is required.
39. In any event, compared to the existing situation at the appeal site, the development now proposed would involve no increase in the number of bedrooms in the property, and an actual reduction in the number of separate residential units. Whilst there would be a small increase in the number of nominal bedspaces, there is no evidence as to the present or past numbers of actual occupants, and thus no certainty that the level of occupancy would undergo any material change at all. Whilst the size of the building would be increased slightly, the additional space created would mainly comprise a corridor, so that the net addition to the amount of habitable accommodation would be negligible.
40. In the circumstances, I am satisfied on the basis of the evidence before me that the development would have no 'likely significant effect', either alone or in combination, on the SAC or its special features.

Conditions

41. I have considered the suggested conditions in the light of the tests contained in paragraph 56 of the National Planning Policy Framework (the NPPF). Where appropriate, I have edited those that I intend to impose, in the interests of clarity and conciseness.
42. I agree that conditions relating to the approved plans, materials, landscaping, security and lighting, and construction management would all meet the relevant tests, and I have imposed these accordingly, as set out in the schedule at the end of this decision.
43. The plans condition is necessary to ensure certainty as to the nature of the development permitted. Control over the external materials is necessary to ensure a satisfactory appearance, although it is sufficient in this case to specify that the materials should match the existing, and I have amended this condition accordingly. A construction management plan is needed to protect highway safety and the amenity of neighbours. However, it is unnecessary also to require a construction logistics plan, and I have therefore combined

these into a single condition. A requirement for some form of landscaping is reasonable, in the interests of visual amenity, albeit that the opportunities likely to be available within the site are limited; I have edited this condition to avoid becoming excessively onerous. And finally, a requirement relating to improved security and lighting is necessary for the reasons discussed elsewhere in this decision; in this case I have again combined the various suggested conditions into one, to ensure a coordinated approach to these matters.

44. I have not imposed the Council's suggested conditions governing the design of the window reveals, or requiring further details of the positioning of mail boxes and postal numbers, as there seems no justification for seeking to control these minor details. I also see no need for a condition relating to boundary treatments, as the site boundaries are largely defined by existing buildings and other permanent features.
45. I have considered carefully the suggested conditions relating to energy and water efficiency, and accessibility. However, all of these matters are subject also to national Building Regulations, and any conditions which would merely duplicate these would therefore be unnecessary. In so far as the conditions now suggested would involve requirements more onerous than those of the Building Regulations, such conditions should only be imposed where there is a clear justification based on local circumstances, and supported where necessary by local plan policies; and in the case of energy standards in particular, this point is made clear in the Written Ministerial Statement issued in December 2023¹. In the present case, there is no evidence that any of the three conditions in question are supported by any relevant policies in the newly adopted WFLP. I have therefore not imposed these conditions.
46. I also note the Council's suggested condition seeking a legal agreement for mitigation relating to the SAC. However, for the reasons already discussed, I am satisfied that no such mitigation is needed in this case. And in any event, it is well established that planning obligations of this nature cannot be imposed by condition.

Conclusion

47. For the reasons set out in this decision, I have found that the proposed development would provide acceptable living conditions, and would provide adequate refuse storage, without any significant adverse impacts on car parking or on future development opportunities. In respect of these matters, the appeal proposal would comply fully with Policies 53, 56 and 57 of the WFLP.
48. There would be some relatively minor conflicts with some elements of WFLP Policy 66 and London Plan Policy D6, with regard to headroom and the lack of provision for a CPZ. However, the scheme also falls to be considered in the context of the support that WFLP Policies 4 and 12 give to housing development in the Chingford Mount Strategic Location.
49. On balance therefore, the development would generally accord with the development plan as a whole. NPPF paragraph 11 (c) makes it clear that

¹ 'Planning - Local Energy Efficiency Standards Update': Statement by Baroness Penn, Parliamentary Under Secretary of State for Levelling Up, Housing and Communities, on 13 December 2023 (UIN HLWS120)

proposals that accord with the development plan should be approved without delay.

50. In addition, the provision of housing of a better quality than that which currently exists at the site adds some further weight in favour of the appeal. No other material considerations weighing against the proposal have been substantiated.

51. I have taken account of all the other matters raised, but none outweighs the above findings. I therefore conclude that the appeal should be allowed.

J Felgate

INSPECTOR

SCHEDULE OF CONDITIONS

The planning permission to which this decision relates is granted subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall be carried out in accordance with the following approved plans:
 - 4D-268 P01: Proposed floor plans
 - 4D-268 P02: Proposed loft floor and roof plans
 - 4D-268 P03: Proposed front and rear elevations
 - 4D-268 P04: Proposed side elevations
 - 4D-268 P05: Proposed sections
- 3) The external surfaces of the development shall be constructed in materials to match those used on the existing building.
- 4) No development shall commence until a Construction Management Plan (CMP) has been submitted to the local planning authority and approved in writing. The CMP shall include details of the proposed arrangements during the construction period, with regard to site access, parking, loading and deliveries, storage of materials and waste, and hours of work. Thereafter, the construction works shall be carried out in accordance with the CMP as thus approved, throughout the construction period.
- 5) No new dwelling within the development shall be occupied until a landscaping scheme has been implemented in accordance with details to be submitted to the local planning authority and approved in writing. The scheme shall include provision for planting containers to the access and roof terrace areas. Thereafter, the landscaping scheme shall be retained and maintained at all times. During the first five years after planting, any plant that dies or is removed, or becomes seriously damaged or diseased, shall be replaced with another of the same type and size, unless otherwise approved in writing by the local planning authority.
- 6) No new dwelling within the development shall be occupied until measures to enhance the safety and security of users have been installed, in accordance with a scheme that shall have been submitted to the local planning authority and approved in writing. The scheme shall include details of external lighting, CCTV, entrance gates, and entry control systems, and these shall be fitted as approved. Thereafter, the security measures shall be retained, and maintained in good order. No other external lighting shall be installed at any time, except with the written approval of the local planning authority.