



Appeal Decision

Site visit made on 16 January 2024

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2024

Appeal Ref: APP/U5930/W/23/3320213

108B Woodhouse Road, Leytonstone, Waltham Forest E11 3NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr James Gardner against Waltham Forest London Borough Council.
 - The application Ref is 220433.
 - The development proposed is outline application for the construction of three 2-storey dwellings with associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Government published a revised version of the National Planning Policy Framework (the Framework) in December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the main issues in this case are largely unchanged. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework from the parties, and that no party would be disadvantaged by such a course of action.
3. Since the appeal was submitted the Council adopted the Waltham Forest Local Plan Part 1 (February 2024) (the LP). The Council has confirmed that the policies relevant to the determination of the appeal contained within the London Borough of Waltham Forest Development Management Policies Local Plan (October 2013) and the Waltham Forest Local Plan Core Strategy (March 2012) have been superseded. I am required to determine this appeal on the basis of the development plan which is in force at the time of my decision. The Council have confirmed in that they now rely upon Policies 28, 53, 56, and 57 of the LP. The appellant has had an opportunity to provide their views on the relevance of these new policies. This appeal has therefore been determined in relation to the policies contained within the LP.
4. The appeal results from the Council's failure to determine the planning application within the prescribed period. As a result, there is no formal decision on the application. However, the Council has provided evidence setting out the reasons why it would have refused outline planning permission had it been empowered to do so. I have taken the Council's evidence, along with all other information before me, to inform the main issues.

5. The description of development proposed in the original planning application was changed during the course of the application being considered by the Council. The Appellant has provided an explanation regarding the evolution of their scheme and provides details of their revised plans¹ which were to be considered by the Council. The Council's Delegated Report is clear that the proposal on which the Council would have made a decision is a scheme for three 2-storey dwellings. Accordingly, the description I have used in my decision and in the banner heading above concerns the revised proposal for three 2-storey dwellings, and I have considered the proposal on that basis.
6. The original planning application sought outline planning permission with all matters reserved. Whilst I have had regard to the revised plans, I have seen no indication that the purpose of the application has changed in respect of any of the reserved matters. Accordingly, I have treated the revised plans as being for illustrative purposes only, a matter which also informs the main issues in this particular case. Notwithstanding the concerns expressed by the Council and others in respect of the layout and detailed design features shown on the plans, my decision has been made on the basis that the appeal concerns a bare outline proposal.

Main Issues

7. The main issues are:
 - the effect of the proposed development on the character and appearance of the surrounding area;
 - whether the appeal site can accommodate the scale and form of development proposed having regard to -
 - (i) the living conditions of the occupiers of the neighbouring dwellings 110 to 126 (inclusive) Woodhouse Road, and 130, 132 and 134 Matcham Road in respect of overshadowing, outlook and privacy, and
 - (ii) the living conditions of future occupiers of the proposed dwellings in respect of overshadowing, outlook, and the adequacy of private outdoor amenity space; and
 - the effect of the proposed development on the supply and availability of general industrial land and premises in the Borough.

Reasons

Character and appearance

8. The area surrounding the appeal site is primarily residential comprising mostly two-storey development of varying age and appearance, the majority of which is in the form of terraced housing most of which include short front and rear gardens. The area exhibits a generally quiet, pleasant, well-established residential feeling.
9. The appeal site is a generally flat, relatively long and narrow strip of land. Single storey buildings and storage containers associated with the last use of

¹ The plans the subject of this appeal are: 1348_YPUK_P002 (Proposed site layout); 1348_YPUK_P003 (House Type A Floor Plans and Elevations); and 1348_YPUK_P004 (House Type B Floor Plans and Elevations).

the site as a builder's yard remain on the land. The width of the site is such that, in order to accommodate three detached two-storey dwellings that would meet at least the minimum gross internal area (GIA) required by Policy 56 of the LP, along with the minimum 50sq.m. private external amenity space also required by that policy, the overall size of each plot, particularly the depths, would be substantially constrained.

10. The constrained nature of the appeal site is demonstrated through the plans which, whilst I have taken to be illustrative for the purpose of this appeal, show the outcome of floorplans of three modest, detached dwellings designed to meet minimum GIA development plan policy requirements. Each of the plots shown on the plans fail to provide the minimum garden areas by some considerable margin. As a result, the detached dwellings proposed would appear cramped within the site, and they would fail to assimilate successfully with the prevailing character of the surrounding terraced blocks.
11. Notwithstanding the size, design and layout of dwellings shown on the illustrative plans, even if the smallest two-storey detached dwellings were proposed to meet the minimum GIA required by the relevant development plan policies, the size and shape of the appeal site is such that it is unlikely that such dwellings could be accommodated satisfactorily having regard to the need to meet minimum requirements for private external amenity space.
12. Overall, the size and shape of the appeal site is such that the introduction of three relatively small detached two-storey houses, which would be readily visible from most surrounding properties and from the parking area and cul-de-sac at Robinson Close, would result in a development that would have a cramped, incongruous and alien appearance within this setting.
13. On this main issue, whilst I recognise that the site is not within a conservation area, or close to listed buildings, I conclude that the proposed development would result in undue harm to the character and appearance of the surrounding area. Accordingly, it would conflict with Policy 53 of the LP which, amongst other things, in summary, requires that development proposals reinforce and/or enhance local character and distinctiveness, taking into account existing patterns of development, townscape, skyline, urban form and grain, building typologies, and architecture.

Scale and form of development

(i) living conditions for neighbouring residents

14. The appeal site is bounded by dwellings on Woodhouse Road to the north and Matcham Road to the west, and the short gardens of those dwellings abut the site. In order to achieve minimum development plan policy requirements for bedroom sizes and overall GIAs for new dwellings, and to provide well-designed dwellings as required by Policy 53 of the LP, specifically that development proposals are fit for purpose and demonstrate careful consideration of the needs of all building users, it would be necessary to create buildings that were close to, or on the shared boundaries with neighbouring dwellings.
15. This is demonstrated through the illustrative plans, and I have not seen evidence showing alternative arrangements for three detached dwellings on the site. That being the case, at least one, if not all of the proposed dwellings would be positioned close to the rear garden boundaries and ground floor rear

- windows to habitable rooms in the dwellings numbered 110 to 126 Woodhouse Road (the Woodhouse Road dwellings) which are situated immediately to the north of the appeal site.
16. Due to their likely orientation relative to the Woodhouse Road dwellings, given the short rear gardens at those existing dwellings and the presence of ground floor windows to habitable rooms in their rear elevations, the height and proximity of the proposed dwellings would lead to an unacceptable level of overshadowing to the rear gardens of the Woodhouse Road dwellings.
 17. Furthermore, given the limited separation between the proposed dwellings and the Woodhouse Road dwellings, the introduction of two-storey blank walls in positions close to the common boundaries would create harmfully oppressive outlooks from the rear gardens and rear ground floor windows of the Woodhouse Road dwellings.
 18. Whilst I recognise the illustrative nature of the dwelling shown as Plot 1 HT B-3B5P (Plot 1), given the constrained nature of the site, even if a dwelling in that location were reduced in size to meet the minimum two-storey dwelling GIA requirement, it is likely that such a dwelling in that general location would be unacceptably close to the common boundaries with some, if not all of the dwellings 130, 132 and 134 Matcham Road. As a result, the proposal would lead to an unacceptable level of overshadowing to the small rear gardens of those dwellings and would create harmfully oppressive outlooks from those rear gardens.
 19. The illustrative plans show first floor bedroom windows in the rear elevation of Plot 1 which are shown to be some 1.7m from the common boundary with the Woodhouse Road dwellings. This would result in an unacceptably harmful loss of privacy to the occupiers of those dwellings. Whilst I recognise the plans are illustrative, I have not seen evidence to demonstrate that all three proposed dwellings could be designed to overcome such a loss of privacy through overlooking of at least one of the existing dwellings and their gardens. I am therefore not satisfied that the scheme as a whole would not result in a harmful loss of privacy to existing neighbouring residents.
 20. The proposed development would result in undue harm to the living conditions of the occupiers of the neighbouring dwellings 110 to 126 (inclusive) Woodhouse Road, and 130, 132 and 134 Matcham Road in respect of overshadowing, outlook and privacy. Accordingly, it would conflict with Policy 57 of the LP which, amongst other things, in summary, requires that development proposals should respect the amenity of neighbours by avoiding harmful impacts from overlooking, enclosure and/or the loss of privacy and outlook.
- (ii) living conditions for future occupiers*
21. The arrangement of three detached dwellings on the appeal site would be largely determined by the site's characteristics as I have described them above, particularly the constrained width. I have seen no substantive evidence to demonstrate how three detached two-storey dwellings could be laid out on the site other than generally in the manner shown on the illustrative plans.
 22. The space available to accommodate the proposed dwellings is such that their relative proximity to each other would result in significant overshadowing of the

small garden areas of one or more of the proposed dwellings. Furthermore, the limited separation between each of the dwellings would result in tall two-storey blank walls alongside the small garden areas of one or more of the proposed dwellings, and this would create an oppressive sense of enclosure within those gardens. Accordingly, the outlook that would be created from the proposed gardens would be unduly harmful.

23. Moreover, the illustrative plans show ground floor living room windows in the eastward-facing elevations of Plots 1 and 2 which are shown to be some 4.5m and 5.6m respectively from, and facing directly towards, the blank two-storey gable wall of an adjacent proposed dwelling. This would result in an unacceptably harmful and oppressive outlook from the living room windows of those proposed dwellings. Whilst I recognise the plans are illustrative, I have not seen evidence to demonstrate that three detached dwellings could be laid out to overcome such a harmful effect on the outlook from living rooms in the proposed dwellings.
24. Each of the plots shown on the illustrative plans fail, by some considerable extent, to provide the minimum private outdoor amenity space necessary to meet the requirements of Policy 56 of the LP. Even if smaller dwellings were proposed, I have not seen evidence to demonstrate that the necessary minimum garden areas to serve each of the three proposed detached dwellings could be achieved on the site. Therefore, the proposed dwellings would have insufficient private garden space to meet the reasonable needs of future occupiers.
25. Overall, I am not satisfied that a scheme for three detached dwellings of an appropriate scale and form could be devised at the site without creating unacceptable harmful living conditions for future occupiers of the proposed dwellings in respect of overshadowing, outlook, and the adequacy of private outdoor amenity space. Accordingly, it would conflict with Policies 53, 56 and 57 of the LP which, amongst other things, in summary, require that development proposals should respect the amenity of future occupants by avoiding harmful impacts from enclosure and/or the loss of outlook; are fit for purpose and demonstrate careful consideration of the needs of all building users; and that houses should provide a minimum of 50sq.m. of private external amenity space per dwelling.

Supply and availability of general industrial land and premises

26. The current use of the site is given as Use Class B2² in the application form, and it is described as being vacant which is consistent with my observations during my site visit. The Council's evidence states that it has no objection, in principle, to residential use on the site, subject to compliance with the requirements of development plan policies concerning the loss of employment land.
27. LP Policy 28 supports residential development in non-designated employment locations only where the scope for mixed-use intensification with employment uses has been explored fully and any loss of floorspace is justified with reference to marketing evidence of at least 12 months demonstrating no reasonable prospect of the site being retained in business or industrial uses.

² of The Town and Country Planning (Use Classes) Order 1987 (as amended).

28. The supporting text of the LP states that *'Applicants will be required to provide robust evidence that the relevant employment site or floorspace has been marketed for at least 12 months, that the form of the marketing has been appropriate, and that, despite best endeavours, no tenant (or purchaser) interested in using the site or floorspace for employment use can be found.'* Whilst the Appellant claims that the builder's yard has been vacant for many years without any interested parties willing to take it over, I have seen no substantive evidence demonstrating that the site has been marketed for B2 uses, nor did I observe any evidence of marketing through display boards at the site during my visit. However, the appeal site is largely surrounded by housing, including the small rear gardens to dwellings abutting the site on two sides, and these circumstances are a material consideration to which I attribute considerable weight in assessing compliance with the development plan.
29. I have not been provided with information concerning any controls or limitations on the existing B2 use of the site, and I note that there is no relevant planning history identified in the Officer Report. In these circumstances, noting that the appeal site is in a generally quiet residential area, the potential introduction of other B2 general industrial uses were that to be the outcome of a marketing exercise would, in my view, be likely to lead to other more harmful effects in respect of noise and disturbance to adjoining residents. Therefore, whilst the proposal would conflict with the expectations of Policy 28 of the LP and the mechanism for its implementation as described in the LP supporting text, in this particular case, in my judgement, other material considerations, particularly the effect other B2 uses could have on the living conditions of neighbouring residents, weigh against strict compliance with the development plan in this specific regard.
30. I acknowledge that the proposed development would result in a loss to the supply and availability of general industrial land and premises in the Borough, and, without appropriate marketing that demonstrates no reasonable prospect of the site being retained in business or industrial uses, this would conflict with the requirements of LP Policy 28 as described above. However, given the location of the site and its context in a primarily residential area, and the relatively small loss of employment land, material considerations in respect of the effect other general industrial uses could have on the living conditions of adjoining residents weigh significantly against compliance with the development plan in respect of this main issue. On this main issue only, material considerations lead me to a conclusion contrary to the requirements of LP Policy 28 due to the particular circumstances of this case.

Other Matters

31. The advice provided by Planning Officers during the course of considering the planning application, while coming from a number of Officers, relates to the scheme as it evolved. Whilst I note the Appellant's comments concerning advice given to their agent about a scheme for three dwellings, I have seen no documentary evidence to substantiate these comments. The Appellant expresses concerns about the outcome of discussions with a Planning Officer regarding the proposal now before me, noting the more positive comments provided by a previous Officer. However, from the information I have seen, that earlier advice related to a fundamentally different scheme. I note the Appellant's frustration in respect of staff changes and the time taken by the Council in dealing with the planning application. However, the advice given by

Officers throughout the evolution of a scheme cannot be taken as binding on the Council as local planning authority, and it does not weigh in favour of the proposal on which, in any event, the Council did not make a formal decision.

32. The Council expresses its expectation that limitations on future residents applying for car parking permits associated with the Controlled Parking Zone in which the appeal site is located, and arrangements for the provision of financial contributions towards improving walking and cycling opportunities would ordinarily be matters secured through planning obligations under s106 of the Act, in accordance with development plan policies, had it been minded to grant planning permission. No planning obligation has been provided to meet these expectations, and I note that the Appellant has made no specific comment regarding these matters. Given my conclusions on the main issues, I am satisfied that I need not consider these matters further in this instance.
33. The appeal site lies within the Zone of Influence (the ZOI) of the Epping Forest Special Area of Conservation (the SAC) which is afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). The Council states that proposals resulting in a net increase in the number of dwellings in the ZOI have been identified through surveys as having a likely significant effect on the sensitive interest features of the SAC as a result of increased recreational pressure. A scheme of mitigation has therefore been devised³ whereby financial contributions in the form of a levy is required from each additional dwelling granted permission.
34. The appeal proposal would result in a net increase of three dwellings. Ordinarily, it would be necessary for me to complete an Appropriate Assessment prior to securing any necessary mitigation, in this case through a planning obligation as has been suggested by the Council. Notwithstanding the lack of a planning obligation securing the SAMM levy, Regulation 63(1) of the Habitat Regulations indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to grant permission for the proposal. As I am dismissing the appeal for the reasons detailed above, I do not need to consider this matter further as it could not lead me to a different conclusion.

Conclusion

35. Notwithstanding my conclusion in respect of the supply and availability of general industrial land and premises in the Borough, in my view, the harm to the character and appearance of the surrounding area, and on the living conditions of neighbouring residents and future occupiers of the proposed development are the prevailing considerations. For the reasons given above, the proposal would conflict with the development plan when read as a whole. Material considerations, including the Framework, do not indicate that a decision should be made other than in accordance with the development plan. Having considered all other matters raised, the appeal is dismissed.

David English

INSPECTOR

³ The Strategic Access Management Measures (the SAMM)