



Appeal Decision

Site visit made on 5 March 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 MAY 2024

Appeal Ref: APP/B5480/W/23/3331681

1A Howard Road, Upminster RM14 2UE

- 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 Sewell against the decision of the Council of the London Borough of Havering.
 - The application Ref is P1087.23.
 - The development proposed is demolition of existing commercial unit and construction of a flatted block to comprise 1x1 bedroom flat, 2 x 2 bedroom flats and 1 x 3 bedroom flat with private and communal amenity space, cycle storage and refuse storage.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context, and both parties have had the opportunity to make comments on the revised Framework within their statements and final comments.
3. Both parties refer to the planning history of the appeal site, including two earlier planning applications, the first of which was the subject of a dismissed appeal¹ ('the earlier appeal decision'). I have had regard to the planning history of the appeal site in my decision, insofar as it is relevant to the proposal before me.

Main Issues

4. Taking into account the Council's reasons for refusal and the issues raised in its report and statement, the main issues are:
 - Whether the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to private outdoor space provision, accessibility, and outlook;
 - The effect of the proposed development upon the living conditions of neighbouring occupiers, with particular regard to their outlook;
 - Car parking; and,

¹ Ref. APP/B5480/W/22/3290293

- The effect of the proposed development upon the character and appearance of the area, with particular regard to its scale.

Reasons

Living conditions – future occupiers

5. The appeal site is located behind properties that face onto Station Road and Howard Road, and its rear side abuts a pub car park, which is accessed from Station Approach. The proposed development includes private amenity space for all 4 units to the rear of the proposed building (on the side nearest the pub car park); three of the units would have a ground floor courtyard abutting that boundary; and the proposed unit at first and second floor includes a balcony area at second floor level. Station Approach provides access to Upminster Station and the Station's large car park, there are bus stops on the road, including an area reserved for waiting buses adjoining the opposite both the pub car park and a taxi office. The combined effect of passing and waiting vehicles on Station Approach and using the pub car park, can give rise to considerable noise, disturbance, and fumes, including at times in early mornings and at night-time.
6. Notwithstanding that the proposed private amenity spaces exceed the minimum sizes required, that they have been amended by altering the position of the proposed building to be larger in size than previously, and they include a rear brick boundary wall, they could nevertheless be significantly affected by noise, disturbance, and fumes.
7. The pub car park includes parking spaces that would be directly up against the rear boundary walls of the proposed new courtyards. The proposed rear boundary walls would likely mitigate some of the effects, however, there is no noise assessment or related modelling that would demonstrate that it would baffle the noise sources to an acceptable level or prevent vehicle fumes from entering the private amenity spaces. Given the close proximity of the proposed courtyards to the pub car park and Station Approach, it is unlikely the new walls would acceptably reduce noise, disturbance and fumes from waiting vehicles and their movements very near to the appeal site, which would be harmful to the living conditions of future occupiers when using their courtyards.
8. In terms of the proposed balcony serving the flat at first and second floor level, although this would have a closed wall on either of its sides, and be set further back than previously, it would face directly towards the pub car park and Station Approach. As a result, future occupiers of this space would also likely experience significant noise, disruption and fumes that would be harmful to their living conditions. For these reasons this private amenity space would be of a poor quality, particularly taking account of its enclosed sides and orientation. Its raised level would not provide adequate mitigation from such likely harmful effects.
9. The appellant states that for architectural reasons it's not possible to design the properties with their rear elevations on the opposite side to the pub car park. However, there is limited information to support this view, and without this information I cannot be certain that there would not be an alternative design solution that avoids the above identified harm.

10. My attention has been drawn to an appeal decision on land at 56-58 St Mary's Lane, Upminster,² which found a development of flats provided satisfactory private amenity spaces despite, the one of the areas adjoining a parking court, and that the proximity of the parking court could be addressed by a boundary treatment condition. Although there are some similarities to the appeal scheme, the ground floor flat in that case nearest to the parking court, had a much different arrangement of its boundaries and private amenity space, and its main habitable room openings were also mostly on elevations away from the adjoining parking area. In addition, there is no indication that the parking belonged to a pub or that there was a busy road on the opposite side of it, such as is the case on this appeal. Consequently, I attach limited weight to that appeal decision, and it has not altered my opinion of the appeal scheme.
11. I note the appellant has referred to 2 no. existing balconies at second floor level to the rear of No.68 Station Road in support of their appeal. Whilst these balconies are orientated in a different direction and are further away from the pub car park and Station Approach, they too could experience some noise and disturbance. I note their presence, but they have not led me to conclude differently regarding the harmful effects of the appeal proposal.
12. Although there are some private amenity spaces proposed to the front of the building, these areas would not be particularly private, and they would not be sufficient to mitigate the harmful effects identified to the private amenity spaces to the rear.
13. The main habitable areas of the proposed units would have windows on their front and rear elevations. Those windows and openings on the rear elevations at ground floor level would look into the courtyard areas and are said to be to the north side of the proposed building. The distances between the rear elevations and the proposed boundary walls would be adequate to ensure a suitable outlook, which would be assisted by the window openings within the boundary walls, ensuring a satisfactory outlook for future occupiers of these flats, which would not be overly enclosing. For these reasons, and considering the supplied visuals, the proposed arrangement of the rear courtyards would not appear cramped for future occupiers. Nor would the layout of the first and second floor flat be cramped for its future occupiers, due to the size of the proposed accommodation and private amenity space being above the minimum size required and taking into account the proposed communal space.
14. I note level access can be provided to the ground floor flats, had I been minded to allow the appeal, to ensure all of the proposed flats would as far as reasonably possible, be accessible and inclusive for all, a planning condition requiring additional information could have been imposed.
15. The appellant has referred to the inspector's conclusions on the earlier appeal decision that concluded the daylighting and sun lighting levels for future occupiers of the proposed development was acceptable. In terms of the proposed new flats which have rear walls on their boundaries, given the height the height of the walls they would be unlikely to cause unacceptable loss of daylighting or sun lighting to future occupiers, even taking into account the orientation of the building and the surrounding properties, particularly given its separation from the rear boundary wall.

² Ref. APP/B5480/W/21/3269451

16. I therefore conclude that whilst future occupiers would have an acceptable outlook, and they could have good levels of accessibility subject to a condition, the proposed private amenity spaces for the flats would be harmful to the living conditions of future occupiers of the proposed development due to noise, disturbance, and fumes and the poorly designed and positioned second floor balcony. In doing so, I find the proposal contrary to Policy D6 of The London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (LP) and Policy 7 of the Havering Local Plan 2016-2031, adopted November 2021 (HLP) that amongst other things, require new housing to be of a high standard of design that protects the amenity of existing and future occupiers from being adversely affected from unacceptable noise, and disturbance. In addition, the proposal would also conflict with paragraph 135 of the Framework insofar as it requires a high standard of amenity for existing and future users.

Living conditions- existing occupiers

17. The proposed development would be three-storeys, and much higher than the existing buildings on the appeal site. The adjoining occupiers of No's 3 and 5 Howard Road, whose rear elevations and garden face directly towards the appeal proposal are likely be affected the most.
18. The proposed building would be a similar height to the nearest properties on Howard Road, which it is noted have dormer roof extensions on their rear sides, making them bulkier at second floor level. Whilst there has been some minor reduction in the height of part of the building, there has been some minor increase in its height and scale in other parts as well. Given the relatively short rear gardens belonging to No's 3 and 5 and the scale, height, and width of the proposed building that spans the entire width of the appeal site, so close to their gardens, it would have an overbearing and visually dominant effect for occupiers of those properties when within the garden areas harming their living conditions.
19. From inside No's 3 and 5 Howard Road, the effect of the proposal upon their occupiers would likely be similar to that considered on the earlier appeal decision. Whilst not a policy requirement, the 25-degree rule, together with the separation distances, would mean that the proposed development would not appear overbearing from within No's 3 and 5 Howard Road.
20. Notwithstanding that there is no updated daylighting and sun lighting assessment, given that the respective separation distances have not significantly changed, and taking into account the changes in height, I see no reason to disagree with the conclusions on the earlier appeal decision. I am therefore content that the proposal would not be harmful to the living conditions of neighbouring occupiers in respect of daylighting and sun lighting effects.
21. The appellant has stated that the flat at first and second floor is necessary to make the re-development of the appeal site viable, although I have no financial assessment to support this view. Consequently, this does not persuade me differently regarding the harm identified on this main issue.
22. I therefore conclude that whilst the proposed development would not be overbearing from within nearby properties, the scale of the proposal would be overbearing from within the rear gardens of No's 3 and 5 Howard Drive, and it would harm the living conditions of the existing occupiers of those properties.

The development would therefore conflict with Policy D3 of the LP and Policy 7 of the HLP, which among other things, seek to prevent new development having unacceptable effects upon the outlook of neighbouring occupiers. In addition, the proposal would also conflict with paragraph 135 of the Framework insofar as it requires a high standard of amenity for existing and future users.

23. The Council referred to the proposal conflicting with Policy D4 of the LP, that policy is focussed on strategic design review and analysis, I did not find it to be directly determinative on this main issue.

Car parking

24. The appeal site is located within a well-connected area near to Upminster Station and bus stops, it has a PTAL rating of 5. The appeal site is not within a Controlled Parking Zone (CPZ), although there are some yellow lines on Howard Road, and other neighbouring roads, preventing parking at certain times. Notwithstanding this, there are some unrestricted parking spaces along Howard Road and neighbouring roads, and although only a snapshot in time, from my site observations in the late afternoon, these spaces were largely occupied.
25. Policy T6.1 states that new residential development should not exceed the maximum parking standards, and in areas with a PTAL rating of 5 - 6 development should be car free with the exception of the provision of disabled persons parking. I agree with the parties that it would not be possible to provide disabled off-street parking in this case. The Council has referred to a CPZ being nearby, but they have not provided any evidence of this CPZ, its specific parking implications from the proposals, or justified why a planning obligation to prevent future occupiers of the proposed development obtaining parking permits to park within the CPZ would be reasonable.
26. I saw on my site inspection that there was no CPZ in the immediate area, so preventing future occupiers from obtaining a parking permit to park within the CPZ serve little or no purpose to secure the development as car-free. Consequently, I am not persuaded such an obligation would be reasonable or necessary to make the development acceptable, nor am I satisfied that the development can be secured as car-free on the information before me.
27. The existing commercial use includes some on-site parking provision, and whilst some future occupiers of the proposed development may only use public transport, walk, or cycle, others may own a car. With there being 4 no. properties, it is more than likely that there would be some added parking stress from future occupiers trying to park in the very restricted on-street parking areas nearby.
28. There has been no parking stress survey provided to demonstrate that there would likely be adequate parking spaces available for future occupiers within a close proximity of the appeal site. As such, and in view of my site observations it has not been demonstrated that the proposed development would not add to parking stress in the local area, which could give rise to adverse effects upon the free flow of traffic along the surrounding road network from future occupiers trying to find a suitable parking space, or having to park on yellow lines, including for temporary periods.

29. I therefore conclude that the proposed development could not reasonably be secured as car-free, and in the absence of a parking stress survey to confirm otherwise, the proposed development would likely contribute to unacceptable parking stress in the local area and conditions prejudicial to highway safety and adversely affecting the free flow of traffic. In doing so, I find the proposed development to conflict with Policy T6.1 of the LP and Policy 23 of the HLP, insofar as they require new development in areas with a PTAL rating of 5 to be car-free, and for development to ensure a safe and efficient use of the highway which avoids adverse impacts on the transport network. In addition, the dismissal of this appeal would be consistent with paragraph 115 of the Framework that states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Character and appearance

30. The proposed development would be a combination of 2 and 3 storeys high, there would be some space to the front side of the properties including communal areas, along with amenity space to the rear sides of the proposed units for those flats having ground floor accommodation. The nearby properties along Station Road are tall, terraced properties, and the nearest properties along Howard Road are two storey and semi-detached, some having rear dormer roof extensions.

31. The appellant has said that the existing buildings occupy 208 square metres and the proposed building would occupy 162 square metres. Like the existing buildings, the proposed development would abut the side boundaries of the appeal site, however, in this urban context this close arrangement of properties would not create a harmful appearance. Similarly, the coverage of the appeal site in buildings and hard surfacing, would not appear alien or out of context in this location. I also share the view expressed by my colleague Inspector on the earlier appeal decision, that there is no requirement for the proposed development to be 'subsidiary' to nearby properties given the urban location, built context and that it is seen separately. Consequently, the scale and size of the proposed building would relate well to the scale of properties nearby.

32. I therefore conclude that the proposed development would not be harmful to the character and appearance of the area and would comply with Policy 26 of the HLP and Policy D3 of the LP, which amongst other things, require new development to be high quality, which respects, reinforces and complements the area and responds to distinctive local building forms and patterns of development. In addition, the proposal would also accord with paragraph 135 of the Framework insofar as it requires development to be sympathetic to local character and history, add to the overall quality of the area, and be visually attractive.

Other Matters

33. The appeal site not being within a Conservation Area and that there are said to be no Listed Buildings nearby is a neutral matter that does not weigh in favour or against the proposal.

34. I note that there are no objections to the loss of the commercial floorspace; that the proposal would use a sympathetic palette of external materials; that the site is located in a well-connected area near to public transport, shops,

services, Upminster Park and Clockhouse Gardens; it would have an acceptable mix of housing types in a secure environment; it would meet minimum space standards and not be harmful to neighbouring occupiers in terms of potential overlooking; it would utilise sustainable drainage including a sedum roof; and it would provide secure storage for 8 no. cycles. However, these are all likely to be requirements for any such well-designed housing scheme, and they are also neutral matters in my decision that do not weigh in favour or against the proposed development.

35. The appellant has referred to several policies in the LP, the HLP and also the Framework in support of their appeal. These include making an effective use of land, particularly previously developed land, the contribution of small sites to housing supply (less than 0.25 hectares in size), recognising that they can be delivered more quickly, and their contribution to Havering's overall supply of housing; along with building inclusive communities. The proposal is also said to include biodiversity enhancements in the courtyards; that the existing buildings are in a poor condition and have suffered from subsidence and that the proposal would be an improvement to the appearance of these buildings; that the proposal is designed to meet highest practical standards of accessibility and inclusivity; and that the proposed housing is said to be the optimum that is capable of being provided from the appeal site. The collective support offered by these various points is noted, which weigh in favour of the proposal.
36. It is noted that there have been objections raised by interested parties in addition to the issues addressed in the main issues above, which I have had regard to. However, as I am dismissing the appeal for other reasons it has not been necessary for me to address these further.

Planning Balance and Conclusion

37. The Council cannot demonstrate a five-year supply of deliverable housing sites, in this case the provisions of paragraph 11(d) ii of the Framework apply.
38. The benefits of the proposal would include making an efficient use of land, on a small site within an existing urban area and boosting the supply of housing, which would contribute towards the Council's overall supply of housing and that it could be delivered relatively quickly. There would also likely be some economic benefits associated with the construction of the development. The proposal would also remove commercial uses from near existing residential uses and improve the character and appearance of the appeal site, provide some small biodiversity improvements, and it could provide good levels of accessibility and inclusiveness. Given the relatively small scale of the proposal, I collectively give these benefits limited weight.
39. Although the proposal would not be harmful to the character and appearance of the area, it would introduce development that would be harmful to the living conditions of existing and future occupiers, and also likely contribute to parking stress in the area and be prejudicial to highway safety. As such the proposal would conflict with the HLP, the LP and the Framework, which seek to ensure a good standard of amenity for existing and future occupiers and for development not to be prejudicial to highway safety. In the circumstances I regard the proposal to conflict with the development plan taken as a whole, and I give this harm significant weight.

40. In view of the above, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies of the Framework taken as a whole.
41. The proposal therefore conflicts with the development plan and material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal is dismissed.

A Hunter

INSPECTOR