



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: 23rd May 2024

Appeal Ref: APP/U5930/W/23/3327521

342 Grove Green Road, Leytonstone, Waltham Forest E11 4EA.

- 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 Rajesh Patel against the decision of Waltham Forest London Borough Council.
 - The application Ref is 231113.
 - The development proposed is a change of use to rear ground floor from Class E to Class C3, single storey rear extension to ground floor and first floor rear extension to provide single dwelling. Loft conversion and dormer construction and subdivision of existing unit.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Rajesh Patel against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. The Council modified the description of the proposed development to include several matters of detail. However, when read alongside the plans, the original description adequately describes the proposal. I have seen no formal agreement between the main parties about the modified description. Accordingly, I have used the original description given in the planning application in my decision and in the banner heading above.
4. 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.
5. 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Management Policies Local Plan (October 2013) and the Waltham Forest Local Plan Core Strategy (March 2012) have been superseded by the LP. The Council has also confirmed that it maintains its objection to the proposal and now relies upon Policies 3,

20, 53, 56, 57, and Policies 60 to 66 (inclusive) of the LP. The appellant has had an opportunity to provide their views on the relevance of these new policies.

6. I am required to determine this appeal on the basis of the development plan which is in force at the time of my decision, and that is what I have done.

Main Issues

7. The main issues are:

- whether satisfactory living conditions would be provided for future occupiers in respect of external amenity space, including private space;
- whether satisfactory living conditions would be provided for future occupiers in respect of internal space;
- whether the proposal makes adequate provision through planning obligations in respect of:
 - (i) car parking arrangements,
 - (ii) sustainable transport including walking and cycling,
 - (iii) mitigation of development effects on European Sites, and
 - (iv) appropriate pre-commencement surveys and post-completion repair of the highway;
- the effect of the proposal on the character and appearance of the host property and the surrounding area; and
- the effect of the proposal on highways safety in respect of construction logistics.

Reasons

Living conditions – external amenity space

8. Policy 56 of the LP provides minimum external amenity space standards for new homes. This includes that, for one-bedroom flats and maisonettes there is a requirement to provide a minimum of 10sq.m. of external amenity space per dwelling. Furthermore, this minimum area should include some private outdoor amenity space for each dwelling in the form of balconies, terraces and/or private gardens (including roof gardens). Part C iii. of Policy 56 of the LP further requires that private external amenity spaces must be a minimum of 5sq.m. and achieve a minimum depth of 1.5m, a requirement that is consistent with Policy D6 of The London Plan (March 2021) (the London Plan).
9. The proposal includes a studio flat (Flat 2) on the first floor, and a one-bedroom flat (Flat 3) which would have living and sleeping accommodation over the second and third floors. The plans show no provision for external amenity space to serve future occupiers of either of those proposed dwellings. In these respects, the proposal fails to meet the minimum requirements established in the development plan for external amenity space, including private external amenity space, to meet the reasonable needs of future occupiers. As a result, the proposal would create living conditions for future occupiers that would be harmful to their health and well-being.

10. The Appellant refers in their Design and Access Statement/ Planning Statement (May 2023) (the DAS) to other flatted development recently permitted¹ within the Council's administrative area. Whilst I note that the Council has commented on these examples, notwithstanding these previous decisions, the failure of the proposal before me to meet at least the recently adopted standards for external amenity space cannot, in my view, be justified by such a small number of cases where the Council has allowed development contrary to its normal minimum space standards. Furthermore, those previous cases where the Council has waived its minimum standards would not, on their own, justify allowing development that would be harmful to the health and well-being of future occupiers of the proposal before me. I therefore attribute very little weight to those other decisions.
11. Nearby open spaces identified in the DAS would be of benefit to future occupiers. However, I am mindful of the supporting text given in the LP in respect of Policy 56 which advises that '*For flats and maisonettes, private external amenity spaces provided in the form of balconies, terraces or gardens are often of greater value in terms of privacy and usability than communal external areas*'. The open space referred to in the DAS, and other areas in the vicinity, would not adequately compensate for the failure to meet the defined standards for private outdoor space. Furthermore, other outdoor open space would not fulfil the valuable function provided by private outdoor space at each flat which is necessary for the reasonable enjoyment of the proposed dwellings by future occupiers.
12. Whilst the DAS indicates that the proposal does not include for any terraces or balconies to ensure neighbouring privacy is respected, I am not persuaded that this is a sufficient justification to demonstrate why the proposal should not comply with the development plan in this respect, or that appropriate external amenity space could not be designed and laid out to prevent any significant loss of privacy to neighbouring occupiers. I find the lack of any outdoor amenity space for future occupiers to carry out minimal day to day activities would be significantly harmful to the health and well-being of those future occupiers.
13. On this main issue, I conclude that the proposed development would not provide satisfactory living conditions for future occupiers in respect of external amenity space, including private space. Accordingly, the proposal fails to comply with Policy D6 of the London Plan and Policy 56 of the LP both of which require at least a minimum provision of external amenity space, including private outdoor space to serve future occupiers of new dwellings. The proposal also fails to meet the expectations of Chapter 12 of the Framework in respect of ensuring developments create places with a high standard of amenity for future users.

Living conditions – internal space

14. Policy 56 of the LP, Policy D6 of the London Plan and the Technical Housing Standards – Nationally Described Space Standard (NDSS) each provide space standards which housing developments are required to meet. The minimum gross internal floor areas and the minimum bedroom floorspace requirements are consistent across the development plan policies and the NDSS.

¹ Ref: 210091 - 24 Queens Road; Ref: 213504 - 2a Crown Buildings The Green; and Ref: 220969 - 160 Blackhorse Road.

15. The DAS confirms that the proposal would provide *'three dwelling flats; 1x two bed - three person flat of 70m², 1x studio flat of 37m² and 1x one bedroom - two person flat of 58m²'*. However, the plans indicate that Flat 2 would cover some 39sq.m, and that Flat 3 would cover some 60sq.m. The matters in dispute concern the definition given to the two-bed flat (Flat 1) which the Appellant indicates would be a 2-bed 3-person home; and the gross internal floor space proposed in Flat 3 which the Council has calculated as being below the minimum requirements.
16. In respect of Flat 1, the plans show the ground floor bedroom covering 11sq.m. and the first-floor bedroom covering 12.5sq.m. The NDSS requires that in order to provide two bedspaces, a double (or twin) bedroom should have a floor area of at least 11.5sq.m. The Council calculates that the ground floor bedroom would provide 12sq.m of floor space. If this is the case, the proposal could be judged as being capable of accommodating two people in each bedroom. I have been provided with no substantive evidence in the form of specific room dimensions that convincingly contradicts the Council's calculations. Based on the information before me I am therefore not satisfied that Flat 1 would not provide two double bedrooms. I am therefore also not satisfied that Flat 1 would meet the minimum requirement for the gross internal floor area of 78sq.m. for a 2-bed 4-person dwelling.
17. The Council calculates that Flat 3 would provide a gross internal floor area of approximately 54sq.m. This would be substantially below the minimum requirement of 58sq.m. for the type of dwelling proposed. While the Appellant disputes the Council's calculations, I have been provided with no substantive evidence in the form of specific dimensions for the proposed dwelling that convincingly contradicts the Council's calculations.
18. Given the scale of the discrepancy and the extent to which the proposal would fail to meet the minimum gross internal floor area based on the Council's calculations, I am not satisfied that it has been adequately demonstrated that the proposal would accord with the development plan or the NDSS in this respect.
19. Although the Appellant's plans and evidence indicate that each of the proposed flats would meet the various requirements of the development plan policies and the NDSS, the Council's analysis of these identify specific instances where they consider this would not be the case. I have been provided with no compelling evidence which counters the Council's submissions, or which demonstrates to me that their measurements are inaccurate.
20. Furthermore, the internal space standards within Policies D6 of the London Plan and 56 of the LP are a minimum requirement. Given that not all of the proposed flats would meet these minimum requirements, I find that the scheme would not be delivering homes of high quality and that appropriate living conditions would not be provided for the future occupiers of all of the proposed flats.
21. On this main issue, I conclude that satisfactory living conditions would not be provided for future occupiers in respect of internal space. Accordingly, the proposed development would be contrary to Policy D6 of the London Plan and Policy 56 of the LP which provide minimum space standards for new homes and set out that housing should be of a high quality of design and provide adequately sized rooms with comfortable and functional layouts which are fit

for purpose and suitable to meet the needs of residents. The proposal would also fail to meet the minimum requirements given in the NDSS.

Planning obligations

22. The Council's fourth reason for refusal concerns the failure to secure certain financial contributions and other requirements through planning obligations. Specifically, these concern the need for a pre-commencement condition survey of the carriageway and footways fronting the site; a financial contribution for monitoring a 'Construction Logistics Plan' (the CLP); a financial contribution towards improving sustainable modes of transport including walking and cycling; controls over parking permits for future occupiers; and a financial contribution towards mitigating likely significant development effects on a European Site through the Epping Forest Strategic Access Management and Monitoring Strategy (the SAMM). I shall return to each of these matters below and later in my decision.
23. The Appellant confirms his willingness to enter into planning obligations to secure each of the contributions, measures and monitoring requirements set out in the Council's fourth reason for refusal and indicates that he would accept a suitable condition to confirm these matters were the appeal to be allowed. However, the Planning Practice Guidance² (the PPG) is clear that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases.
24. The PPG goes on to state that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate where there is clear evidence that the delivery of the development would otherwise be at serious risk. Further clarification is given to indicate that this may apply in the case of particularly complex development schemes. In my judgement the case before me is not particularly complex, and I am not persuaded that there are exceptional circumstances that would justify the use of such a Grampian style condition in place of a completed planning obligation in this case.

Sustainable transport contribution including walking and cycling

25. Policies 60 and 61 of the LP both create a requirement for development to contribute to the Council's objective to deliver more attractive, accessible, healthy and safe streets, places and neighbourhoods for all residents. Specifically, proposals are supported through these policies where they increase the proportion of trips made by walking, cycling and public transport; create an environment where residents and visitors choose to walk, cycle or use public transport; and where the development supports a shift to active transport modes and encourages an increase in walking and cycling.
26. In these respects, the development plan provides the policies necessary to justify the Council seeking a reasonable contribution from the proposed development towards improving sustainable modes of transport, including walking and cycling in the vicinity of the site. Ordinarily, it would be

² PPG Paragraph: 010 Reference ID: 21a-010-20190723

appropriate to secure financial contributions to meet the policy requirements through a planning obligation.

27. However, notwithstanding the Appellant's agreement to the Council's requested financial contribution of £3000 for the purpose of improving sustainable modes of transport, the Council has not provided evidence to explain the justification for seeking that sum. I have not been directed to any relevant provision in the London Borough of Waltham Forest Revised Planning Obligations Supplementary Planning Document (2014) (the POSPD) to assist in understanding the requested financial contribution. Moreover, I have seen no information about the improvements that are planned to be carried out in the vicinity of the site and which would be funded in part through the proposed development.
28. Therefore, given these circumstances, I am unable to conclude with any degree of certainty whether all of the tests for planning obligations set out in paragraph 57 of the Framework would be met in respect of the suggested financial contribution towards sustainable transport measures.

Parking permit controls

29. The proposal is located in a Controlled Parking Zone (CPZ). Currently there is no off-street parking to serve the property, and the scheme would provide no parking spaces for the occupiers of the additional dwellings. The provision of two additional dwellings therefore has the potential to result in an increase in on-street parking demand. LP 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 LP Policy 66.
30. However, in addition, Policy 66 of the LP also states that, where a CPZ scheme is in place, a legal agreement will be sought, to restrict new residents from obtaining parking permits. Whilst the Appellant has confirmed his agreement to enter into a planning obligation to provide the appropriate controls over parking permits, and I am satisfied that a planning obligation could be drafted to meet the tests set out at paragraph 57 of the Framework, no such planning obligation has been submitted with the planning application or this appeal.
31. In the absence of a planning obligation to restrict the provision of parking permits to future residents, the proposed development is likely to have a harmful effect on existing on-street parking provision. As a result, the proposal does not comply with the relevant requirements of Policy 66 of the LP regarding controls over parking permits for future occupiers of the proposed dwellings.

The Epping Forest SAMM contribution

32. 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. The SAMM, a scheme of mitigation, has therefore been devised whereby a financial contribution in the form of a levy is required from each additional dwelling granted permission.

Such financial contributions could not be secured through planning conditions, and it would therefore normally be necessary for these to be secured through a planning obligation, either unilaterally, or by agreement.

33. The appeal proposal would result in a net increase of two dwellings. Ordinarily, it would be necessary for me to complete an Appropriate Assessment (AA) prior to securing any necessary mitigation, in this case through a financial contribution as has been suggested by the Council. Notwithstanding the lack of a planning obligation securing the SMM levy, or the Appellant's agreement to enter into such a planning obligation, Regulation 63(1) of the Habitat Regulations indicates that the requirement for an AA is only necessary where the competent authority is minded to grant permission for the proposal. As I am the competent authority for the purposes of the appeal, and because I am dismissing the appeal for other reasons as detailed above, I do not need to undertake an AA and I do not need to consider this matter further as it could not lead me to a different conclusion.

Pre-commencement highways survey and repairs

34. The Delegated Report (the DR) sets out the representations received from the Council's Highway Team which, amongst other things, recommends as a planning condition, the requirement for a pre-commencement condition survey of the adjoining carriageway and footway on Grove Green Road, and associated repairs following completion of the proposed development where necessary.
35. I have not been directed to any explanation as to why such a requirement need be secured through a planning obligation. I note the Highway Team indicate that this requirement should be secured as a planning condition and I see no reason to disagree with that assessment.
36. Arrangements for securing a pre-commencement highways survey, and any necessary repairs following completion of the proposed development could be addressed in an appropriately worded condition were the appeal to be allowed. Accordingly, I am not satisfied that the inclusion of this requirement as a planning obligation would meet the relevant tests set out at paragraph 57 of the Framework because it could be secured by a planning condition.

Conclusion on planning obligations

37. Whilst I have found there to be insufficient information to reach a conclusion on the need for a financial contribution towards sustainable transport measures, and that highways surveys and subsequent repairs could be secured by planning condition, it would be necessary to prevent future occupiers from applying for parking permits, and this would need to be secured through a planning obligation. Similarly, the provision of mitigation in accordance with the SMM would have had to be secured as a planning obligation were that to have been the conclusion of an AA.
38. I have not been provided with sufficient information concerning the scale of contributions needed to accord with the expectations of Policies 60 and 61 of the LP. I therefore cannot conclude whether the proposal would comply with the requirements given in Policy 3 of the LP in respect of securing contributions towards infrastructure that are fairly and reasonably related in scale and kind to the proposed development. Furthermore, I have not been directed to evidence, including the POSPD, which would support the Council's position in

respect of the scale of financial contributions it would seek towards sustainable transport measures.

39. Nevertheless, and notwithstanding the Appellant's position in respect of those matters referred to in the Council's reasons for refusal, I have not been provided with a completed planning obligation. Therefore, in this respect, the proposal fails to accord with the requirements of Policy 66 of the LP which requires controls over parking permits for future occupiers of the proposed dwellings to be secured by legal agreement.

Character and appearance

40. The appeal building is a three-storey property located in a short terrace of similar buildings. The ground floors of the buildings in the terrace facing onto Grove Green Road form part of a shopping parade. However, at the time of my site visit most of the ground floor premises in the terrace, including the appeal property, appeared to be vacant and presented a somewhat unkempt general appearance.
41. Apart from the commercial frontages along Grove Green Road, the area surrounding the appeal site is primarily residential in character comprising mostly two storey terraces of a largely similar age as the appeal property.
42. The properties around the appeal site, including those on Richmond Road and Hampton Road have small front gardens and relatively short enclosed rear gardens. I saw that there are several flat roof dormer extensions to the rear of properties on both of those neighbouring streets, in addition to the dormer extension at 338 Grove Green Road to which the Appellant has drawn my attention. Overall, it appeared to me that such roof alterations are a relatively common feature in the immediate vicinity and comprise part of the character of this well-established residential area.
43. The Heathcote and Star Public House (the pub) occupies a prominent position on the corner of Grove Green Road and Richmond Road and, whilst the upper floors of the pub would benefit from some general maintenance, it is an impressive and substantial building. Whilst I have not seen details, the Council advise that the pub is a locally listed building.
44. From what I saw during my site visit, the building is locally important in terms of its design, external appearance, and its use. These factors contribute towards its significance as a non-designated heritage asset which provides a physical link to the historic development of the local area. The appeal property is attached to the pub.
45. The Framework, at paragraph 209, requires that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. Furthermore, the Framework states that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm and the significance of the heritage asset. I have considered the appeal in accordance with these requirements.
46. I have had regard to the comments provided by the Council's Design Team and those given elsewhere in the DR concerning the proposed ground and first floor extensions. However, the Council's reasons for refusal refer only to 'the proposed roof extension' which, having regard to the description of the

development given in the application, and the modified description used by the Council, I have taken to mean the proposed dormer roof extension. Accordingly, this element of the proposal has been the focus of my attention in determining the appeal.

47. I noted some discrepancies between the details shown on the plans³ in respect of the existing rear elevation and the features I observed during my site visit, including the separating upstand and chimneys between 340 and 342 Grove Green Road, neither of which appeared to be present in the roof of the existing building. Nevertheless, the plans showing the proposed rear elevations are adequately detailed and include dimensioned inset distances of the proposed dormer from the ridge, eaves and side boundaries of the building.
48. Whilst the DR explains the form of dormers that the Council generally accepts by reference to distances from the ridge, sides and eaves, the Residential Extensions and Alterations Supplementary Planning Document (February 2010) (the SPD) provides no prescriptive dimensions in its advice concerning rear dormer extensions.
49. The SPD advises that dormer windows should normally be to the rear of the property as they are less likely to have a detrimental impact on the character of the street scene, and that in dealing with proposals the Council will consider whether the proportions of the extension are appropriate, whether new windows are of an appropriate size and location and relate to existing windows of the original house, and how the roof of the extension is detailed.
50. From the details provided, I would judge that the proposed dormer would generally accord with the advice provided in the SPD. I note that the proposal includes a window that cuts across the eaves and that this is described in the DR as being an existing window, but this did not appear to be the case when I visited the site. The Council expresses its concern about this window which it claims would add to the bulk of the proposed dormer. A similar window to that proposed does, however, exist in the neighbouring property, 340 Grove Green Road, and this is shown on the plans.
51. Overall, in my judgement, the window that would cut across the eaves in the proposal would be seen in association with that similar window in No 340, the positioning and scale of that existing window is a positive feature that adds to the character of the roofscape locally, and I do not consider that the proposal would appear out of character nor would the window cutting across the eaves add to the bulk of the proposed dormer. Furthermore, I find that the limited scale of the proposed dormer is such that it would not harm the significance of the pub as a non-designated heritage asset.
52. Accordingly, the proposed development would not harm the character and appearance of the host property or the surrounding area. In respect of this main issue, it therefore complies with Policy 53 of the LP which provides support for proposals where they, amongst other things, reinforce and/or enhance local character and distinctiveness, taking into account existing patterns of development, townscape, skyline, urban form and grain, and other features of local and historical interest; and where they respond appropriately to their context in terms of scale, height and massing. The proposal would also accord with the guidance in the SPD.

³ Existing Rear Elevation: Drawing Number 0661-FP-009

Highway safety and construction logistics

53. The Council's concern in respect of construction logistics arises from the representations made by its Highway Team to the details submitted with the planning application. Those concerns are described in the DR which appears to repeat the several specific amendments and additional information requested by the Highway Team to complete a satisfactory CLP.
54. From the information I have seen, in my judgement, each of the matters in the submitted CLP requiring amendment could be achieved relatively easily. Moreover, none of the matters raised in the representation appear to identify fundamental or unsurmountable objections to the proposal in respect of the effect on highway safety associated with the construction logistics that would be necessary to implement the proposal were the appeal to be allowed. Furthermore, I note that the comments from the Highway Team provided in the DR indicate that the submission of a 'Detailed Construction Logistics Plan' would be required as a planning condition.
55. I am satisfied that the matters raised by the Highway Team in respect of the submitted CLP could be adequately addressed through an appropriately worded condition were the appeal to be allowed, and that such a condition could be drafted to meet the tests set out at paragraph 56 of the Framework. Ordinarily this would involve the drafting of a pre-commencement condition, and I have seen nothing in the evidence before me to suggest that the Appellant would not agree to such an approach.
56. Monitoring arrangements for compliance with the CLP could adequately be addressed in an appropriately worded condition. Accordingly, I am not satisfied that the inclusion of a monitoring fee of £250 in a planning obligation, as requested by the Council's Highway Team, would be necessary since the matter could be addressed through a planning condition. The approach suggested by the Highway Team and included in the Council's reasons for refusal would therefore, in this respect, fail to meet the test of necessity for planning obligations.
57. On this main issue, I find that, because an appropriately worded condition could be imposed were the proposal to be allowed, the proposed development would not be harmful to highway safety in respect of construction logistics. The proposal would therefore, in this specific respect, accord with the provisions of Policy 65 of the LP which requires the submission of a CLP prior to the commencement of all new residential development in order to minimise the impact of construction logistics on the road network.

Other Matters

58. The Framework encourages the effective use of land in meeting the need for homes, including providing a variety of housing types. However, this encouragement is not unqualified, particularly in respect of ensuring safe and healthy living conditions. The proposal would be of benefit in contributing to the delivery of additional housing in the area, a benefit to which I attribute moderate weight given the scale of the proposal. However, this benefit would not outweigh the significant harm I have identified that would arise to the living conditions of future occupiers, and the harm associated with additional car parking that would be generated by the proposal.

Conclusion

59. For the reasons given above, having had regard to the development plan as a whole, and all other relevant material considerations, the appeal is dismissed.

David English

INSPECTOR