



Appeal Decision

Site visit made on 29 May 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2024

Appeal Ref: APP/U5930/W/23/3326822

Briar Court, 281 Forest Road, Leytonstone, Waltham Forest E11 1LD

- 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 Arthur Alexander Properties Ltd against the decision of Waltham Forest London Borough Council.
 - The application Ref is 230233.
 - The development proposed is erection of additional part 1, part 2 storeys to provide six new flats, together with elevational improvements and new associated cycle and refuse stores.
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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. The appellant has submitted 2 no. Unilateral Undertakings. The first Unilateral Undertaking dated 3 June 2024 (UU1) provides obligations in respect of car-free housing; to enter into a Section 278 agreement with the highway authority in respect of a highway condition survey and works within the highway for the renewal of a footpath and crossover; a contribution towards off-site sustainable transport; a contribution towards Special Protection Area mitigation; a contribution towards the monitoring of a construction logistics management plan; and a monitoring fee for the agreement. The second Unilateral Undertaking (UU2) dated 3 June 2024 provides the same obligations, except the off-site sustainable transport contribution. The Council has been consulted on UU1 and UU2, and I shall return to them later in my decision.
4. The Council has advised that its Development Management Policies Document (2013) and its Core Strategy (2012) referred to in its notice of decision are now superseded by the Waltham Forest Local Plan, Part 1 Shaping the Borough 2020 -2035, adopted 2024 (WFLP). The Council has advised of the policies of the WFLP that are relevant to this appeal, and the appellant has had the opportunity to comment on them. The appeal has been determined on this basis.

5. The appellant has stated that their Daylight and Sunlight Report, dated 15 November 2022, prepared by Waldrams (DSR), referenced 'A Guide to Good Practice (2011)' in error, and that it has been prepared based on the BRE 2022 Guidelines. The Council have acknowledged this error, and the appeal has been determined on this basis.

Main Issues

6. The main issues are:

- the effect of the proposed development on the character and appearance of the host building and the area, with particular regard to its density, scale, and design;
- whether the proposed development would provide satisfactory living conditions for future occupiers of the proposed development, in terms of private outdoor space;
- the effect of the proposed development on the living conditions of the occupiers of the host building and those at No. 283 Forest Road, with particular regard to light, outlook and the use of an outside drying area;
- the effect of the proposal on existing trees; and,
- the effects of construction logistics on highway safety.

Reasons

Character and appearance

7. Briar Court is two storeys on its front side and three storeys on its rear side, it has a flat roof design across both parts of its roofs, there are also flat roofed plant housing structures situated on top of both roofs. The building is setback from the road with a grassed area between it and Forest Road, and it is clad in light coloured brick. There is also a grassed area immediately behind the building, understood to be used as communal amenity space for the occupants of the existing 10 no. flats at the host property. Currently, bins are stored near to the pavement edge in front of the host building.
8. In the immediate area there are a mixture of flats and houses, including No. 283 a modest two-storey pitched roof dwelling on one side of the appeal site, and No. 279 to the opposite side, which is a three-storey building containing flats, although it also has rooflights providing accommodation at third floor level, and it has pitched roofs on its outer sides. On the other side of Forest Road are mainly garages behind properties on a road that runs parallel with Forest Road. There are other similar flat roofed buildings containing flats nearby, including Child Court that is 3 storeys high and of similar appearance to the host property. Other residential development nearby is mostly two and three storeys high, with pitched roofs. Brick is generally the most prevalent building material on external walls in the immediate area.
9. The addition of 6 no. flats to the building, which would provide 16 no. flats in total, would not in principle be objectionable as it would facilitate an efficient use of the building and the air space above it, within a sustainable location. Consequently, the principle of the intensification of the use on the appeal site is not unacceptable. However, the effect of the proposed alterations to the appeal property, including to the character and appearance of the building and the

area, together with its effect upon living conditions and trees (see below), to facilitate it, are also important considerations that need to be considered alongside the proposed increase in density.

10. The adjoining taller apartment building (No. 279), which has four storey accommodation (partly within its roof), has pitched roofs on its outer sides, its angled roofs and darker roof covering break up the mass of the building. In contrast, Briar Court and Child Court sit uncomfortably against the existing mainly pitched roof residential properties nearby, they have higher eaves heights than their neighbouring two storey properties, and their bulky straight edged designs appear pronounced and dominant, particularly alongside No. 283, which sits between them.
11. Notwithstanding its setback from Forest Road and the mixture of property types and forms in the immediate locality, the additional storeys to Briar Court would add to its scale and height, further exacerbating its raised eaves level and sharp sided boxy appearance. Although, it would be no higher than No. 279, its straight sided and flat roofed appearance would be significantly different to No. 279, and its increased scale and design in the form proposed would be harmful to the appearance of the host building and the area. The proposed external materials of standing seam cladding, and composite cladding in contrasting colours, combined with brick on the lower storeys would do little to off-set this harm. Moreover, it would introduce an illegible form of development that would be more harmful to the character and appearance of the immediate area than the existing building, and it would not take the opportunity to improve the appearance of the building and its contribution to the area.
12. It is acknowledged that the existing bins are being stored near to the back edge of the pavement, and the proposal would provide storage provision for both the existing and proposed flats in an accessible location for future and existing occupiers, and for collection operatives. However, the introduction of the solid close boarded tall timber fence directly up to the pavement edge, would create an incongruous feature owing to its siting, scale and design that would be harmful to the appearance of Briar Court and the character and appearance of the area, particularly when seen along Forest Road. Whilst the appellant has suggested that conditions could be used to address the concerns raised by the Council in respect of the proposed refuse and recycling area, it is not clear how this could be achieved, given that there is no alternative location proposed, or space available for any meaningful planting around it.
13. I therefore conclude that although the principle of increasing the density of residential development would not be harmful to the character and appearance of the area, the details of the design and scale of the proposed alterations, including the proposed refuse and recycling area, would be harmful to the character and appearance of the property and the area, and there would be conflict with Policy 53 of the WFLP, that amongst other things, requires new development to achieve an exemplar quality of design and architecture, use high quality and attractive materials, reinforce local character and distinctiveness, and respond to context in terms of height scale and massing. The proposal would also conflict with paragraph 135 of the Framework insofar as it requires development to add to the overall quality of an area, be visually attractive and sympathetic to local character.

14. In addition, the proposal would be inconsistent with Section C1 of the National Design Guide, dated January 2021, as it would not positively respond to the scale, appearance, and form of the local area.

Living conditions- future occupiers

15. Policy 56 of the WFLP requires each new 1- and 2-bedroom flat to have a minimum of 10 square metres of external amenity space, with 5 square metres of this required to be private external amenity space. When calculating communal amenity space, it says that paths, and parking areas should be excluded. Policy 56 also states that where it is not possible to provide external amenity space, off-site contributions may be sought towards provision locally.
16. The proposal would provide no private amenity space for any of the proposed units. Whilst I note that the existing flats are not provided with any private amenity space, and that other flats elsewhere may not have such private space, that does not justify the proposal failing to comply with the requirement of Policy 56 of the WFLP in this respect.
17. It is noted that there are public parks within walking distance of the appeal site. However, that does not off-set the loss of accessible private amenity space that each occupier is required to have. Nor have the Council identified contributions to local public open space provision that could off-set this lack of private amenity space in this case.
18. The appellant has made me aware that the size of the proposed new flats is above that required by NDSS, and the existing shared outdoor communal space, said to measure 190 square metres, would be above the minimum external amenity space required for the proposed and existing flats combined. Be that as it may, Policy 56 is clear that private amenity space is required for the new flats in addition to the external amenity space that is provided for communal use. Furthermore, meeting NDSS is a policy requirement and a neutral factor in my decision.
19. The appellant has referred me to the Mayor for London's, Housing, Supplementary Planning Guidance, dated 2016 (SPG), and suggested that it says private amenity space can be provided as internal space. Whether this be so or not, Policy 56 of the WFLP post-dates the SPG and is clear that amenity space must be provided externally. As such that argument does not persuade me differently.
20. I note the appellant's comments about how the introduction of balconies to the host property, to provide private amenity space, would harm the symmetry of the host building. Although this has not been demonstrated through any submitted plans/drawings, including whether it would be possible for them to be located on side and rear elevations. Consequently, this argument carries little weight.
21. The appellant has referred me to an appeal decision in Hammersmith and Fulham, in which an Inspector appears to accept that private amenity space is not necessary for a development. I have very limited details of that case, and I am not aware of the particular circumstances of that appeal, I also note it has a 2013 prefix in its reference number, as such the decision was likely to have been made some time ago. Furthermore, it was not within Waltham Forest, or

considered against the WFLP. I therefore attach limited weight to it in my decision.

22. On this main issue, I conclude that the proposed development would not provide satisfactory living conditions for future occupiers in respect of external private space. Accordingly, the proposal fails to comply with Policies 53, 56 and 57 of the WFLP, which amongst other things require at least a minimum provision of external private amenity space of 5 square metres for each one- and two-bedroom flat, for that space to be well-designed, and for new development to respect the amenity of existing and future occupiers. The proposal also conflicts with paragraph 135 of the Framework that requires a high standard of amenity for existing and future users.

Living conditions – existing occupiers

23. Briar Court is close to, and sits alongside No. 283 Forest Road, it is already taller, and extends both in front and behind No. 283. There are 5 no. first floor openings on No. 283's elevations nearest to Briar Court that are most likely to be affected by the proposal. The DSR found that the proposal would not give rise to unacceptable effects upon these 5no. openings which are said would retain the vast majority of their existing daylight and sunlight, nor is it said that there would be an unacceptable effect in terms of the Vertical Sky Component. The Council has not provided any substantive evidence to counter this, and I see no reason to disagree with the conclusions of the DSR.
24. Although the proposal would increase the height of the appeal property this would be wholly above the existing building, which would minimise the effect for occupiers of No. 283 in terms of loss of light, and their outlook, and any views of the upper levels would not be readily visible from within No. 283. In addition, the orientation of Briar Court in relation to No. 283 would be unlikely to cause unacceptable shading. I note the Council referred to breaches of a 45-degree rule. However, the existing building is already said to impinge the 45-degree area and the proposal would not materially differ in this respect.
25. The Council has objected regarding the effect upon the health and wellbeing of the existing occupiers of Briar Court from the loss of their existing drying area, (where the proposed new cycle store would be located). The communal open space to the rear of the host building would appear to have other space within it that could be used for this purpose. Had I been minded to allow the appeal, a condition could have been imposed to secure provision is made for a drying area within the communal amenity space. This would have allowed the appellant the opportunity to consult occupiers of Briar Court in this regard, and ensure adequate provision is made to protect the health and wellbeing of existing occupiers.
26. I therefore conclude that the proposed development would provide satisfactory living conditions for the occupiers of 283 Forest Road, and subject to a condition in respect of an outside drying area, would provide satisfactory living conditions for existing occupiers of Briar Court. In doing so, I find the proposal would comply with Policy 57 of the WFLP, that amongst other things requires new development to respect existing occupiers, including their outlook, enclosure, and daylight/sunlight effects. In addition, and for the same reasons the proposal would comply with paragraph 135 of the Framework, insofar as it requires a high standard of amenity for existing and future users.

27. The Council referred to Policies 56 and 15 of the WFLP on this main issue. These policies are mainly concerned with the size of new residential accommodation and outdoor amenity space provision, as such I did not find them to be directly determinative on this main issue.

Trees

28. There are 2 no. trees to the rear of the existing building, they are located within the grassed shared amenity area. Although the trees do not appear to be mature, one of them has a reasonably large crown spread that extends over part of the grassed area.
29. No information has been submitted to identify these trees, their health, their contribution to the visual amenity of the area, or any assessment of how the proposed development would affect them and their root protection areas, including the increased use of the shared amenity space and construction operations. Even though no below groundworks are proposed near to the trees, the increased use of the communal area, re-located drying area, and construction operations could affect the trees.
30. The appellant's comments about the Council not requiring an Arboricultural Assessment to validate the application are noted, nevertheless this does not negate the effect of the proposed development upon these trees. I also note the appellant's suggestion that a condition could be used to control the effects of the proposal upon the trees. However, with no precise information on the trees, and the relatively restricted area for construction materials and communal outdoor space, I am not persuaded a condition would be appropriate to fully take account of the trees.
31. In the absence of sufficient information to assess the effects of the proposed development upon trees, the proposal conflicts with Policy 80 of the WFLP, which amongst other things, requires development not to be a threat to trees, and that trees are protected from construction works.

Effect of construction logistics on highway safety

32. The Council's concern in respect of construction logistics relates to representations from its highway team, regarding the effect of construction works associated with the development upon highway safety.
33. The appellant's Construction Traffic Management Plan, prepared by Mode Transport Planning, dated December 2022 (CTMP), broadly sets out the approach regarding construction working and delivery hours, construction delivery management, and construction vehicle routing.
34. I am satisfied that the submitted CTMP addresses most of the matters raised by the highway team, although the precise details could be secured through an appropriately worded condition, were the appeal to be allowed. However, due to the restricted areas around the host building, including the 2 no. trees to its rear side, and with there being no defined area for the storage of materials on the site, I am not persuaded that it would be reasonable for this aspect to be conditioned. Without the precise information to show that construction materials could be stored on site, and how construction works could be undertaken, together with any mitigation for the effects upon the trees, it is uncertain that satisfactory space on site would be available for these purposes,

which could give rise to conflict with users of the highway should materials need to be stored on or near to the highway.

35. I therefore conclude that subject to an appropriately worded condition most of the proposed development would not be harmful to highway safety in respect of construction logistics, however, without a plan showing a suitable area for storage of materials and construction areas, the construction effects of the proposal could be harmful to highway safety and conflict with the requirements of Policies T4 and T7 of The London Plan, The Spatial Development Strategy for Greater London, dated March 2021, which amongst other things require development to facilitate safe, clean and efficient deliveries and servicing and not increase road danger.
36. The Council also referred to Policy 3 of the WFLP on this main issue, that policy is mainly concerned with the delivery of infrastructure, and I did not find it to be directly determinative in this case.

Other Matters

37. Reason for refusal no.7 relates to planning obligations that the Council say are necessary to make the development acceptable. The appellant has submitted UU1 and UU2 in response to this, the Council has raised several concerns about both UU1 and UU2. In addition, further justification from the Council has been sought regarding the obligations relating to a financial contribution of £250 towards monitoring a construction logistics plan; a financial contribution of £6,000 towards improving sustainable modes of transport; and a financial carbon offsetting contribution (referred to in reason for refusal no.7 but not within UU1 and UU2). The Council's response received has not fully justified why such contributions would be necessary in this case. Nevertheless, as I am dismissing the appeal for other reasons it has not been necessary for me to make findings on UU1 or UU2 in this case.
38. I acknowledge that there have been issues raised by third parties in addition to the main issues above, which I have had regard to. However, as I am dismissing the appeal for the reasons outlined above it has not been necessary for me to consider those issues any further in this case.
39. It is acknowledged that the appeal site is not within a conservation area, however, this is a neutral factor that does not weigh in favour or against the proposal.
40. The appellant has said that the Council has under-delivered on its housing requirement over the last two years, whether this is so, I have not been made aware that the Council does not have a 5-year supply of housing, and I also note that it has a newly adopted plan.

Conclusion

41. The proposed development would be a small to medium sized housing site, it would make an efficient use of already developed land and airspace above the building, contribute towards Waltham Forest's overall housing supply, and there would be economic benefits associated with the construction of the development. However, these benefits would be relatively modest given the scale of the proposal.

42. Whilst I find the proposed development's effect upon the living conditions of the occupiers of the host property and No. 283 Forest Road to be satisfactory, that a construction logistics plan could be addressed by a condition, and in-principle the density of the proposed development is acceptable, I also find the proposal would be harmful to the character and appearance of the area in terms of its design and scale, that there is insufficient information regarding trees, and that it would not provide future occupiers with satisfactory living conditions. As a result, I find there to be conflict with the development plan taken as a whole, and the proposal would therefore not comprise sustainable development. There are no other considerations, including the Framework and the collective benefits raised in support of the appeal proposal, which indicate a decision other than in accordance with the development plan. I therefore dismiss the appeal.

A Hunter

INSPECTOR