



Appeal Decision

Site visit made on 18 June 2024

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st July 2024

Appeal Ref: APP/U5930/W/23/3331749

Land at the rear of 63 Goldsmith Road, Leyton, London E10 5EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr David Andrew against the decision of Waltham Forest London Borough Council.
 - The application Ref is 230430.
 - The development proposed is described as, *'outline application for the subdivision of land and basement excavation to create a single dwelling house with associated bicycle, refuse and recycle storage. For the assessment of all relevant matters with landscaping reserved'*.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The location of the appeal site has been taken from the decision notice as this accurately describes the location of the site.
3. The description of development has been taken from the decision notice and appeal form as this accurately describes the proposed development. I am aware of the appellants' comments in relation to subdivision/title matters although this would not alter my assessment and thus the description is appropriate in this case.
4. The Councils' statement of case explains that the Waltham Forest Local Plan LP1, 2024 (WFLP) was adopted on 29 February 2024. On this basis, the previous Core Strategy, 2012 and Development Management Policies, 2013 are superseded by the WFLP. I have been provided with a copy of the relevant policies and determined the appeal accordingly.
5. The planning application is submitted in outline with landscaping reserved for a subsequent reserved matters application. Landscaping details are shown on drawing No. 09 'Proposed Landscape Plan'. However, as the matter of landscaping is not being considered, I have taken this detail into account only in so far as showing what the proposed development is likely to look like.
6. The appellant has submitted a further plan showing landscaping as referred to above. A number of reports have also been submitted as part of this appeal including, Internal Daylight Assessment, Ecological Appraisal and Tree Survey and Arboricultural Impact Assessment. As the landscape plan is for indicative purposes only given that landscaping is reserved for further consideration and the aforementioned documents do not change the overall scheme then the

information is not considered prejudicial to any party. I have therefore taken this information into account in reaching my decision.

Main Issues

7. The main issues are:

- The effect of the proposed development on the character and appearance of the surrounding area;
- Whether the proposed development would provide acceptable living conditions for future occupiers with particular regard to daylight/sunlight and quality of the outdoor amenity area;
- The effect of the proposed development on trees and ecology;
- Whether the proposed development would incorporate adequate measures to deal with collection of refuse and recycling materials;
- The effect of the proposed development on the public highway and its network during construction; and
- Whether the appellant has failed to enter into a legal agreement.

Reasons

Character and appearance

8. The appeal site relates to a parcel of land that formally formed part of the rear garden of an end of terraced residential property No 63 Goldsmith Road. It is understood that the property has been converted into two flats with the front garden providing amenity space for one of the flats with a level of provision provided to the rear to serve the other flat. The remainder of the site forms the appeal site which is well vegetated and has access from the highway between numbers 63 and 65 Goldsmith Road.
9. The surrounding area is predominantly residential comprised of traditional two/three storey terrace dwellings with narrow and reasonably large rear gardens which provides for a verdant and open character to the rear of the properties. Many of the dwellings have single storey outbuildings at the rear of the gardens which vary in size and design and there is a large single storey building occupying the entire of the rear garden at No 71 Goldsmith Road (No 71) located within close proximity of the site to the northwest. Such outbuildings with the exception of No 71 remain subordinate and ancillary to their host property with the use of the outbuilding at No 71 unknown. I am not convinced that granny annexes would be comparable to the appeal before me which relates to not only a sizable development but a wholly separate residential use.
10. The proposed development seeks outline planning permission to undertake the subdivision of the land with excavation in order to construct a new single storey dwellinghouse located beneath ground level. There would be a large courtyard garden centrally located within the development and a planted roof is proposed.
11. The proposed development would result in a separate residential unit/use at the rear of the site and would require the clearance of vegetation. The building

would be beneath ground level where its impact on the surrounding area would be limited. Nonetheless, it would represent a form of development that is not in accordance with the existing pattern of development in the area, being a standalone residential use with an extensive site coverage which is of a constrained and contrived layout requiring extensive excavation. It would therefore stand out as a discordant feature in the area and would harm the character and appearance of the established development pattern of large open rear gardens especially when seen from the surrounding neighbouring properties. The prevailing pattern of development is of dwellings fronting the roads. The proposed dwelling would be located behind these frontages which is not consistent with the pattern of development.

12. Such developments certainly do not form part of the character of the area and whilst I note the development at No 71, this is very much an anomaly in this area where the use of the building is unknown.
13. The proposed design, being located beneath ground level would not be highly visible as referred to above, but the courtyard would clearly be visible particularly from the rear of properties which would be seen as effectively a sunken hole in the ground that would draw the eye. The proposal would result in the loss of vegetation which would ultimately impact how the site is viewed from the surrounding area where I cannot agree that it would appear more like a landscape scheme/garden than residential development. Whilst proposed landscaping would help to soften the site which would be subject to further consideration, it would still change the existing character of the rear of this site to the detriment of the locality being at odds with the general pattern of development. The site in its current form is well vegetated and underused, although I am not convinced based on my observations onsite that the appeal site is so under-maintained as to justify development which would be harmful to the character and appearance of the area. It could also be resolved through appropriate maintenance and landscape management.
14. The appellant has provided examples of other developments within the borough albeit with limited information. Whilst I do not have all the information which would have been before the decision maker in those cases, their overall location/context and relationship with the street scene/surrounding area differs to the appeal I am considering. They are also materially different in terms of the schemes themselves including their configuration/appearance. I am also aware from the Council's statement of case that some are former industrial sites or form part of a more comprehensive scheme. They are therefore not directly comparable, and I note that their assessment may have been subject to a different policy position to the appeal before me which I have considered on its own merits.
15. I am aware of the appellants' claims that the proposal would not set a precedent in the area as other vacant sites do not benefit from direct vehicular access from the highway as well as overall configurations of properties whereby it may not be possible to achieve a similar scheme. Even so, this would not alter my findings as set out above in relation to character and appearance matters.
16. For the above reasons, the proposed development would unacceptably harm the character and appearance of the surrounding area. It would therefore be contrary to Policies 6 and 53 of the WFLP which together, amongst other

matters, requires development proposals to reinforce and/or enhance local character and distinctiveness, taking into account existing patterns of development, townscape, skyline, urban form and grain, building typologies, architecture, materials, trees and landscaping and other features of local and historical significance.

Living conditions

17. The Council has raised concern regarding daylight/sunlight for habitable spaces given the nature of the sunken courtyard which would be surrounded by a 3-metre-high retaining wall/building. As part of the appeal statement, the appellant has provided an Internal Daylight Assessment which confirms that habitable rooms would have levels of natural light in excess of the minimum standards and the proposed accommodation would meet the current guidelines. On this basis, the Council confirm in their statement of case that they do not have any further comments relating to this matter and I have no compelling reason to question the overall findings of the assessment or raise concern in this regard.
18. The Council accept that the proposed courtyard complies with the area required in terms of its size and I have no reason to disagree. The Council do however explain that information has not been submitted regarding fencing/screening around the top of the courtyard or details of any proposed landscaping and if this would be viable. Notwithstanding that landscaping matters are reserved for further consideration, given the size of the courtyard and that fencing/screening around the top of the courtyard could be secured by way of a planning condition were I minded to allow the appeal, then I have no specific concerns in terms of the quality of the outdoor amenity area. I also have no compelling evidence that levels of light cannot be achieved for this area particularly given the findings of the Internal Daylight Assessment which concludes that the courtyard garden would receive sufficient sunlight. Screening around the top would likely be a glass balustrade which would have the least impact on the available sunlight.
19. Further outdoor space would be provided at ground level and whilst I am aware of the Councils' similar concerns in terms of landscaping which would be subject to further consideration, this would not alter the provision provided by the courtyard which complies with the area required.
20. For the above reasons, the proposed development would provide satisfactory living conditions for future occupiers with particular regard to daylight/sunlight and quality of the outdoor amenity area. It would therefore comply with Policies 56 and 57 of the WFLP which together, amongst other matters, requires new development to respect the amenity of existing and future occupiers, neighbours and the surrounding area as well as requiring all external amenity space to be well designed, appropriately located, and usable.

Trees and ecology

21. The proposed development would result in the removal of all established vegetation. To this end, it appears undisputed that a number of trees have already been removed from the site and I am aware of the Council and third-party frustrations in this regard. An Ecological Appraisal and Tree Survey and Arboricultural Impact Assessment was submitted alongside the appeal statement and whilst I appreciate the site conditions today are arboriculturally

and ecologically different to the conditions present when the application was initially submitted and assessed, I must consider the scheme based on the current context of the site and evidence before me.

22. The Tree Survey provides details regarding existing on and off-site trees having been surveyed and provides for the root protection areas associated with those existing trees which are located off site away from the majority of built development. The Tree Survey relates to the site in question and appears as a final version.
23. The survey confirms that the proposed development clips the radial root protection zone area of T1. It explains that this encroachment is so minimal and thus a precautionary approach in this area will be required. Excavation is to be completed by hand under the supervision of the project arborist to ensure no roots are damaged if they are present. Based on the evidence provided, I am satisfied that existing trees would not be unduly impacted by the proposed development and an arboricultural method statement and tree protection plan could therefore be conditioned to ensure trees can be protected throughout construction were I minded to allow the appeal.
24. The Council refer to the need for a calculation of the Capital Asset Value for Amenity Trees (CAVAT). However, as there are no trees located on the appeal site, then there would not be any need to provide such information. Further, the draft landscaping scheme which would be the subject of further consideration confirms that new trees will be planted which is welcomed particularly given previous site clearance.
25. In terms of ecology, the Ecological Appraisal identifies all relevant statutory and non-statutory designated sites and features of ecological significance within the site, and its surroundings. Reference has been made to the location of the site in relation to the Epping Forest Site of Special Scientific Interest and Special Area of Conservation despite not making specific reference to the borough wide requirement for a SANGS contribution for residential units.
26. The appraisal explains that no direct evidence of protected or notable species were observed on the site (with the exception of active bird nests within the holly tree). It concludes that no protected, priority or notable species permanently inhabit the site, although foxes and badgers could utilise the site. It sets out a number of recommendations/biodiversity enhancements which are considered proportionate to the findings and an appropriately worded condition could be imposed in relation to ecological matters were I minded to allow the appeal. I am aware of local and national guidance/requirements regarding matters relating to biodiversity/ecology. However, the site has been cleared and there is no firm evidence to conclude that prior to clearance works, the site included protected and priority species or that these have been destroyed through the loss of trees. Whilst I appreciate concerns regarding the removal of active bird nests, I am also aware of the appellants' claims that the trees with nests were felled after the nesting season in accordance with guidance from the Ecologist following various visits to the site and I have no substantive evidence to conclude otherwise.

27. The submitted plans indicate landscaping details which sets out new planting which would provide biodiversity enhancements on site which is again welcomed and would be subject to further consideration.
28. For the above reasons, I conclude that based on the evidence submitted, it has been sufficiently demonstrated that the proposed development would not have an unacceptable impact on trees and ecology. It would therefore accord with Policy 80 of the WFLP relating to trees.

Refuse and recycling

29. A storage/holding area for refuse and recycling is shown within the appeal site, with the area for collection for three bins shown within the accessway where there is understood to be a right of access along this shared passageway to the appeal site. At my site visit, I was able to see that bins serving the existing properties already occupy the area to the side of the property like many others in the street and the overall positioning for collection would appear to be the most logical location where bins are placed together. Additionally, this location would also only be used temporarily on collection days as it is understood bins would be pulled back into the site after collection. There is a small strip of landscaping that exists in the collection location as well as power and utility boxes. However, given the overall arrangements that exist and height positioning of boxes on the wall along with the nature of bins which would be moveable in any case, then I do not find these features to be such a constraint as to result in any detrimental impact in terms of disruptions.
30. For the above reasons, I conclude that the proposed development would provide adequate measures to deal with collection of refuse and recycling materials and would therefore accord with Policies 57 and 93 of the WFLP which together, amongst other matters, seek to achieve the sustainable management of waste whilst providing sufficient facilities for the storage, collection and disposal of refuse, considering the level and type of provision, its location, and any negative impacts it may have on visual amenity, access, health and security.

Public highway and its network

31. The Council set out that an Outline Construction Logistics Plan (CLP) is required to demonstrate that the proposed construction would have an acceptable impact on the safe and efficient functioning of the highway and the surrounding road network. Policy 63 of the WFLP relates to development and transport impacts where it explains that major development proposals should be submitted with amongst others, a CLP which is understood to be required at application stage, followed by a detailed CLP at the pre-construction phase, in line with Policy 65.
32. The policy however explains that for minor development, the requirement for a CLP amongst other documents will be assessed on a case-by-case basis, having regard to the transport impacts of the development. Policy 65 of the WFLP specifically relates to CLP's where it explains that this policy applies to all development. However, the supporting text explains that the Council accepts that judgement on a case-by-case basis is also required to whether a development proposal will generate a significant impact on the road network.

33. I have had due regard to the size of the development proposals, extent of the red line boundary and surrounding public highway including controlled parking along with the details provided by the appellant in the Construction Management Plan. Taking all of this into account, it is unlikely that a development of this size would have a materially harmful effect on the surrounding public highway and its network during construction and I am satisfied that such matters could be controlled by an adequately worded planning condition were I minded to allow the appeal.
34. For the above reasons, I conclude that the proposed development would not unacceptably affect the public highway and its network during construction and that such matters could be overcome by a suitably worded planning condition. The proposed development would therefore comply with Policy T7 of the London Plan, 2021 and Policy 63 of the WFLP which together, amongst other matters, relates to development and transport impacts.

Legal agreement

35. The Council set out a number of legal obligations relating to various matters including highways, Strategic Access Management and Monitoring measures, Carbon Offset Fund along with legal and monitoring fees. I understand that the appellant has submitted a draft Unilateral Undertaking which is currently being reviewed by the Council's legal team. There is however a dispute regarding the Carbon Offset Fund financial contribution and thus the Council claim that the appellant has not covered all of the requested matters in the legal agreement.
36. In terms of the Carbon Offset Fund financial contribution, the appellant claims that this is not applicable as development is not major development. I have had regard to the Planning Obligations Supplementary Planning Document, 2017 relating specifically to Carbon Offsetting where it explains that In line with the energy targets set by the London Plan, and updated in the revised GLA Housing SPG, from 1st October 2016 all major residential developments (10 or more dwellings) will be required to offset all carbon emissions, i.e. 100% of carbon emissions. It goes on to state that in the first instance, the reduction of carbon dioxide emissions should be addressed as part of each planning application in accordance with the energy hierarchy. If the requirements cannot be met on site, a contribution will be required to be provided in agreement with the Council as a planning obligation, which is to be expended by the Council as part of the carbon offset fund. Based on the evidence before me and without any compelling evidence to the contrary, then I do not find a financial contribution to be required in the particular circumstances of this case relating to carbon offsetting given that the scheme is not major residential development.
37. For the above reasons, I conclude that based on the evidence before me, the appellant has not failed to enter into a legal agreement. The proposed development would not therefore be contrary to Policies 60, 63 and 94 of the WFLP, which together, amongst other matters, relate to transport matters and infrastructure and developer contributions.

Other Matters

38. Waltham Forest shares a boundary with the Epping Forest Special Area of Conservation (SAC) and following research in the form of a visitor survey by Footprint Ecology, has been found to fall within a wider Zone of Influence (ZOI)

based on the distance the majority of visitors will travel to visit Epping Forest SAC. All new residential development within this ZOI constitutes a LSE (Likely Significant Effect) on the sensitive interest features of the SAC through increased recreational pressure, either when considered 'alone' or 'in combination'. For schemes comprising one or more units of residential accommodation a new package of costed Strategic Access Management Measures (SAMM) has been prepared by the City of London Conservators of Epping Forest. This Mitigation Strategy has been agreed by all of the partners in the agreement and is in the process of adoption. A new SAMM levy is now in operation which requires a contribution of £627 per unit from all new residential schemes.

39. Notwithstanding the appellants' acceptance of a legal agreement, there is no need for me to undertake an AA because the scheme is unacceptable for other reasons.
40. It is recognised that the development would make a contribution to the borough's overall housing targets including for family units, and that the proposal site is in a sustainable location that is close to a shopping centre and transport network. I am also aware of other benefits put forward by the appellant including economic benefits from construction. Nonetheless, the extent to which these matters would be beneficial would be limited given the small-scale nature of the proposals and are insufficient to outweigh the harm I have identified above. Reference has been made to the dwelling being a single self-built dwelling although details of this are limited to consider further and, in any event, would not be sufficient to weigh in favour of the appeal.
41. The property is not located within a conservation area, is not listed and is not subject to an Article 4 direction other than the borough-wide change of use from Class C3 to C4. There may have also been no objections regarding a number of other planning matters. However, such matters would be neutral in my overall decision.
42. I am aware of the planning history of the site and claims made regarding advice followed although this would not alter my findings.

Conclusion

43. Although I have found a lack of harm in relation to living conditions for future occupiers, trees and ecology, refuse and recycling materials, public highway and its network as well as matters relating to the legal agreement, I have found harm to the character and appearance of the surrounding area. It follows that the proposal conflicts with the development plan and there are no material considerations which would outweigh this conflict. I am aware of case law regarding development plan policies although this would not alter my overall conclusion as the harmful impact on the character and appearance of the area would mean that the development is unacceptable.
44. For the above reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

N Teasdale

INSPECTOR