
Appeal Decision

Site visit made on 19 July 2024

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2024

Appeal Ref: APP/U5930/W/23/3332567

Land adjacent to 2 Cogan Avenue, Walthamstow, London E17 5PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Lloyd Singh against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 221753, dated 14 June 2022, was refused by notice dated 20 July 2023.
 - The development proposed is "demolition of the existing garages, and the construction of a 2-bed house over two floors, including basement".
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Decision

1. The appeal is dismissed.

Preliminary matter

2. During the course of the application, amended plans and supporting information on daylight and flood risk, were submitted by the applicant in February 2023. Those plans and documents were received by the Council's case officer, and acknowledged, but apparently were not accepted for consideration. The case was subsequently taken over by another officer, who was unaware of the amended plans. The application was eventually determined in July of that year, and refused, on the basis of the original plans.
3. I appreciate that the amended plans were not requested, and that the Council was under no obligation to accept them. But given the lengthy interval between the date of their receipt and the date of the decision, there seems no reason why they could not have been considered. The changes and additional information were clearly designed to attempt to overcome issues that had been identified by officers. Sufficient time would have been available for re-consultation, if necessary. The changes to the scheme were of a nature that could not, realistically, have adversely affected any third parties.
4. Having regard to the foregoing matters, I have determined this appeal with regard to the amended plans. In the circumstances, I am satisfied that no-one will be prejudiced.

Main issues

5. The main issues in the appeal are:
 - whether the proposed development would provide acceptable living conditions for its future occupiers;
 - the effects of the development on the character and appearance of the area;

- the effects of the proposed works at basement level on flooding, hydrology, hydrogeology and structural stability;
- the effects on the highway network during construction;
- and whether the impacts on local infrastructure, and on important habitats, would be adequately mitigated.

Reasons for decision

Living conditions

Outlook

6. The proposed new dwelling would have accommodation on the ground floor and basement level. The basement would include the main living/kitchen/dining area, plus one bedroom and a bathroom. The accommodation at this level would be wholly below the surrounding ground level.
7. The main basement room and bedroom would look onto a sunken courtyard, effectively no more than a small light well, which would measure at most about 1.8m x 3.6m. This area would be surrounded on its two outer sides by retaining walls of about 2.8m, topped by brick boundary walls of about a further 2.0m; the latter being needed for both privacy and safety. The total height of these two walls would therefore be 4.8m. On the other two sides the upper walls would be part of the new building, and would reach about 5.7m from the base. Seen from courtyard level, at necessarily close range, all of these surrounding wall heights would be overbearing.
8. From some positions in these two lower rooms, it would be possible to see above the courtyard walls and boundary structures. But such views would only be obtainable from at an angle of around 45 degrees or more from the horizontal. This would not be normally regarded as a comfortable angle. And in any event, the only things visible would be trees and sky. No part of the lower floor would have any ground level or horizontal views beyond the small sunken courtyard itself.
9. I appreciate that the occupants would have the opportunity within the courtyard to attempt to grow shade-tolerant plants, and to introduce other decorative features. But even so, the outlook from the dwelling's lower floor, including its main living space, would be limited to such a degree that conditions within the dwelling would be likely to be perceived by most occupiers as oppressive.
10. I am aware that basement or semi-basement living is not unusual in London. But in most such cases that is likely to be because the building already exists. The present case relates to a proposal for a new building. The existence of historical precedents does not justify permitting new development which fails to meet the standards reasonably expected by present-day occupiers, or to comply with adopted planning policies.
11. To my mind, the lack of any reasonable or proper outlook from the basement living accommodation would result in the new dwelling now proposed having unacceptable living conditions. In this regard the scheme would conflict with the aims of Policy DM32 of the Development Management Policies¹ (the DMP),

¹ The Waltham Forest Development Management Policies Local Plan, adopted October 2013

and Policy D6 and Table 3.2 of the London Plan². Together these policies seek to ensure a high quality of housing for future occupiers, including amongst other things a good standard of outlook, with a range of immediate and longer range views, to provide visual interest.

Natural light

12. Within the lower floor, as well as the two windows onto the courtyard, additional light would also be obtained via skylights. The appellant's daylight and sunlight report indicates that all habitable rooms on both floors would meet the recommended criteria for daylight, measured against either the daylight factor or the interior illuminance method. With regard to sunlight, all rooms except the lower floor bedroom would meet the minimum criteria.
13. However, whilst these results do not amount to a finding that the light levels would be unacceptable, neither do they show that it would be good. The score of 1.7 hours sunlight for the main living/dining/kitchen area in particular is only marginally above the lowest acceptable threshold.
14. In addition, just beyond the site's southern boundary, in the garden of the adjoining property, there is an existing tree which rises to a height of about around 8-10m, and other tall bushes around it. The lighting report states that the calculations have been based on a 3D model created from the scheme drawings, but the tree and shrubs are not shown on those drawings, and there is no indication that they have been taken into account. Given their position to the south, on land in another ownership, it seems likely that the effect of this nearby vegetation would be to reduce the light received at the appeal site.
15. Consequently, notwithstanding the submitted information, it has not been demonstrated that natural light within the proposed dwelling would be adequate. In this regard, the proposal again fails to fully satisfy the relevant provisions of DMP Policy DM32 and London Plan Policy D6.

External amenity space;

16. In the DMP, Policy DM7 requires all new homes to have private external amenity space in accordance with Table 8.3. For a 2-bedroom house the minimum standard is 50 sqm. For a 2-bedroom flat, the standard would be 20 sq m. The policy also requires all such amenity space to be well designed, useable, and neither narrow nor awkwardly shaped.
17. In the present case, the lower level courtyard would be 6 sq m, and the front forecourt at ground level is said to be 12 sqm. Even together therefore, these spaces would fail to meet the minimum quantitative requirements, whether assessed as a house or a flat. The flat 'green roof' above the ground floor accommodation is not proposed to be used as amenity space, and does not contribute to the calculation.
18. In addition, the lower courtyard would be of poor quality, because of issues relating to lack of light and outlook similar to those discussed above; and also due to its size and shape. Furthermore, the front forecourt area would offer no privacy, due to its location, and would be awkwardly fragmented by the need to accommodate rooflights, refuse bins, and cycle storage. It would also be north-facing. Neither of the two spaces would offer a pleasant or convenient

² The London Plan, published March 2021

area for sitting out, or for outdoor entertaining, or drying laundry. These spaces would therefore fail to meet Policy DM7's minimum standards in terms of quality, as well as quantity.

19. In the London Plan, Policy D6 has a smaller requirement, which in this case would amount to only 6 sq m. But this policy makes clear that this is intended to apply only where there are no higher standards in the development plan for that particular borough. In the present case therefore, the standards in Policy DM7 of the DMP take precedence.
20. I therefore find that the proposed development would fail to provide adequate, useable outdoor amenity space, causing further harm to future occupiers' living conditions, contrary to DMP Policy DM7.

Internal floorspace

21. In the appellant's amended plans, the gross internal floorspace of the new dwelling is said to be 72 sq m. This figure has not been challenged. This would more than meet the overall floorspace required for a 2-bedroom, 3-person dwelling in both London Plan Policy D6. Likewise, it would exceed the corresponding requirement in the Nationally Described Space Standards (the NDSS)³.
22. In the DMP, although various internal space standards are set out in Policy DM7, these do not specify any standard for 2-bedroom, 3-person dwellings, other than those with only one storey. The individual room standards in both Policy DM7 and London Plan Policy D6 would appear to be met. In any event, the Written Ministerial Statement issued on 25 March 2015⁴ requires that the NDSS be given preference over any conflicting local plan policies.
23. The proposed scheme would therefore provide adequate internal space. However, this would not compensate for the other deficiencies that I have identified.

Conclusion on living conditions

24. The proposed dwelling would fall short of the relevant policy requirements in respect of outlook, natural light, and external amenity space. The development would therefore fail to provide acceptable living conditions for its future occupiers, contrary to the aims of Policy D6 of the London Plan, and Policies DM7 and DM32 of the DMP.

Character and appearance

25. The proposed dwelling, including the boundary walls, would have external dimensions, and an overall shape, not dissimilar from the existing block of garages on the site. Its style would be modern. Although simple, its composition has evidently been given some thought, and has a clear architectural logic. The proposed materials are appropriate, and could be further controlled by condition. Overall, the proposed new building would be a striking addition, and a significant improvement over the existing structure.

³ The Technical Housing Standards – Nationally Described Space Standard (MHCLG, March 2015)

⁴ 'Planning Update March 2015': Written Statement to Parliament by the Secretary of State for Communities and Local Government

26. The design would be quite different from the surrounding inter-war and mid-20th century terraces. But that does not necessarily mean that it would detract. In this case the pattern and rhythm of the existing development would be unaffected. To my mind, the juxtaposition of styles would add visual interest to the street scene.
27. In this regard, it seems to me that London Plan Policy D4 relates primarily to extensions and alterations to existing buildings, and is therefore not directly relevant to a new building such as that now proposed. But in any event, I am satisfied that the proposed design would properly respect its context.
28. I therefore conclude that the development would cause no harm to the area's character and appearance. As such, there would be no conflict with Policy DM29 of the DMP, or Policies CS2 and CS19 of the Core Strategy (the CS)⁵, all of which seek to encourage high standards of design quality in new buildings.

Effects of the proposed basement works

29. The proposed scheme is accompanied by a basement impact assessment report, and also a flood risk and sustainable drainage report. Both reports confirm that the appeal site is located in an area where the risk of flooding, either from rivers, tidal waters, surface water or any other sources, is classed as very low.
30. Based on geological mapping and local borehole data, the basement report states that the site is underlain by clays of low permeability, which have little potential to carry either surface or groundwater flows. In addition, the site is already largely covered by buildings or concrete hardstandings, and in this regard the percentage site coverage would not change; rather, the introduction of the proposed green roof system would enable the run-off rate to be attenuated. The latter is also confirmed by the flood risk report. The impact of the proposed basement on surface or groundwater flows is therefore assessed as negligible.
31. With regard to stability, the basement report states that the underlying strata are considered to provide a suitable bearing layer. A choice of construction methods is available which would be capable of providing both temporary and permanent support for the new building and other nearby land and structures. It is concluded that the development would be unlikely to result in any land or slope stability issues.
32. The basement report acknowledges that a full geotechnical investigation would be required, to determine the site-specific soil conditions in more detail. However, given the presence of an existing building, it seems to me reasonable that intrusive investigations of this kind should be allowed to wait until after the principle of development has been established. A detailed construction methodology would only be possible after that site investigation had been carried out, and so too would the design of the necessary waterproofing, tanking, pumps, sumps and valves. But in most developments, details of this kind fall outside the scope of relevant planning considerations. In the present case, there is no evidence that any of these would be likely to have a bearing on the decision as to whether planning permission should be granted.

⁵ The Waltham Forest Core Strategy, adopted March 2012

33. A sustainable drainage scheme would be needed, including detailed run-off calculations, and also a scheme of flood resilience measures. But there is no reason to doubt that satisfactory details of these items could be devised, and therefore no reason why these should not be dealt with by condition.
34. I fully appreciate the concerns of neighbours regarding the possibility of any adverse impacts on the stability of the land, or on their own properties. But building safety is covered by the Building Regulations, and any damage caused by construction works would be a matter for civil redress. The same applies equally to any potential effects on the public footway or highway.
35. As the Council points out, the professional qualifications of the author of the basement report are not stated. However, there is no contrary technical evidence before me on the matters covered, and I can see no reason to doubt the contents or conclusions of either the basement or flood risk reports.
36. Having regard to all the above, I am satisfied that the development could be carried out without adversely affecting the area's flood risk, hydrology, hydrogeology or land stability. In these respects the scheme would comply with the relevant provisions of CS Policy CS4 and DMP Policy DM34, which seek amongst other things to minimise flood risk and protect the water environment.

Effects on the highway network during construction

37. Cogan Avenue is narrow, with a tight bend close to the appeal site. Pavement parking is permitted on one side, but any vehicles parked on the carriageway would have the potential to cause obstruction. The appeal site is small, and the proposed development would fill the whole of it, leaving little or no room for anything other than the building works. During construction, deliveries, materials, skips, and contractors' vehicles would have little option but to use part of the highway at times.
38. However, works to or within the highway, and any obstruction, are subject to other primary legislation, including The Highways Act 1980. Amongst other things, that Act gives powers to the highway authority to prevent obstruction, and to recover of the costs of any damage. The Act also makes provision for the licensing of skips or other items to be placed on the highway, and for Section 278 agreements to be entered into, for the carrying out of works within the highway; the latter may be subject to conditions where necessary, including for the purposes of safety. Where matters are controlled by other primary legislation of this nature, it is not generally necessary to duplicate those controls through the planning process.
39. In the present appeal, the appellant has submitted a Construction Logistics Plan (CLP), and the Council has identified what it sees as shortcomings in this, including matters relating to loading and unloading, the protection of the footway surface, and temporary measures for pedestrian safety. In this context I note that the submission of a CLP is one of the ways in which Policy DM13(E) of the DMP seeks to ensure that development is integrated with the transport network. But in this case the main matters which the Council identifies are ones which should clearly be dealt with under highways, rather than planning, procedures. As such, none of these seem to me to be material planning considerations.

40. And in any event, there is no suggestion that any of the matters identified are incapable of resolution, and therefore no reason to doubt that a satisfactory CLP could be agreed. It follows that, if a requirement for a CLP were considered to be a relevant planning consideration in this case, notwithstanding my view to the contrary, this could clearly have been dealt with by condition.
41. The Council refers to various policies, including DMP Policy 13, 'Co-ordinating Land Use and Transport', on which I have commented above, and London Plan Policy T7 'Deliveries, Servicing and Construction'. However, both of these seem to me primarily aimed at larger developments. Their application to the present appeal proposal for a single dwelling would risk being disproportionate. DMP Policy 32 seeks to manage impacts on neighbours, including access for refuse collection vehicles, but this seems directed to the permanent impacts of developments after completion rather than any temporary effects during construction. In any event, there is no evidence that refuse collections, or indeed any traffic, would need to be impeded.
42. I conclude that there is no apparent reason why the development could not be carried out without any undue adverse impact on the highway network during construction. And in any event, there is no evidence that any temporary adverse effects would be so severe as to justify a refusal of permission on these grounds. In this regard I find no conflict with any relevant development plan policies.

Mitigation for impacts on local infrastructure and habitats

43. The Council seeks Section 106 obligations for contributions towards sustainable transport infrastructure, and towards the Strategic Access Management and Monitoring (SAMM) scheme for the Epping Forest Special Area of Conservation (the SAC), plus various other obligations including in respect of car-free development. None of these requested obligations are disputed by the appellant, and indeed a document entitled Draft Unilateral Undertaking has been submitted, which indicates the appellant's willingness to be bound by them.
44. However, the document which has been submitted is in a form which is more akin to a 'heads of terms'. As such, the existing document is not in a form that would be capable of being enforced, even had it been finalised and executed. The current position is therefore that, although the need for various planning obligations is agreed, no binding legal deed has been entered into.
45. Having regard to the matters discussed elsewhere in this decision, I do not consider that the sum requested by the Council for monitoring the CLP is justified, because it has not been demonstrated that the CLP itself would be necessary to make the development acceptable. Nor can I see why an agreement under S.278 of the Highways Act would need to be secured by means of a S.106 planning obligation; whilst a S.278 agreement might well be needed, this would be a self-supporting document, independent of any planning obligations. These two suggested provisions would therefore fail the relevant legal tests for planning obligations.
46. But as far as the proposed contributions to transport and SAMM are concerned, and the provisions for the development to be made car-free, I see no reason to doubt that these would be necessary and reasonable. It follows that, in the absence of any relevant obligations, the development would result in harm to

local transport infrastructure, including by reason of parking; and that it would also adversely affect the important habitats of the SAC.

47. In this regard the scheme would conflict with DMP Policy DM36, which empowers the Council to seek obligations where necessary to facilitate development. In the circumstances, the lack of a S.106 agreement or undertaking weighs against a grant of permission.

Other matters

48. The appellant refers to other developments permitted nearby at Higham Hill Road and Claremont Road. But on the evidence supplied I am not able to judge whether those sites or developments are comparable. In any event, I am required to determine the appeal in accordance with the relevant policies of the development plan for the area, unless outweighed by other material considerations, and that approach has led me to the conclusion below.

Conclusion

49. For the reasons set out above, I have found that the proposed development would result in unacceptable living conditions for future occupiers, in terms of outlook, light, and amenity space, conflicting with Policy D6 of the London Plan, and Policies DM7 and DM32 of the DMP. The scheme would also fail to mitigate its impacts on local transport infrastructure and the Epping Forest SAC, contrary to DMP Policy DM36. No other policies have been identified that weigh positively in support of the proposal. The scheme would therefore fail to accord with the development plan as a whole.
50. The development would have some benefits. It would add to the local housing stock, in a reasonably sustainable location close to shops, transport and local facilities. It would also provide a small boost to the local economy. But these benefits would be relatively modest. As such, they do not outweigh the harm to living conditions, and the conflict with the development plan.
51. Of the other matters considered, the scheme would provide adequate internal living space. It would also cause no harm to the character and appearance of the area, nor would it adversely affect the area's flood risk, hydrology, hydrogeology or land stability. And it could be carried out without any undue adverse effects on the highway network during construction. But the absence of harm in respect of these other matters is essentially neutral, weighing neither for nor against; none of these adds positively to the weight in favour of the development.
52. Overall therefore, the balance of the relevant planning considerations weighs decisively against the grant of permission. On this basis, I conclude that the appeal should be dismissed.

J Felgate

INSPECTOR