



Appeal Decision

Site visit made on 18 July 2024

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th August 2024

Appeal Ref: APP/U5930/W/23/3330911

66A Maple Avenue, London E4 8RR

- 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 DPA (London) Ltd against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref is 222283.
 - The development proposed is construction of a single storey front extension, raising height of existing building with installation of pitched roof and repositioning of front fence and entrance gate.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address in the heading above has been taken from the planning application form, which is the same as that given in the appeal form. However, the Council's decision notice refers to 'Ground Floor Flat A, 66 Maple Avenue'. Further to observations at my site visit, I am satisfied that the different addresses relate to the same site. Accordingly, I have used the one given in the original application.
3. I have taken the description of development from the Council's decision notice as this more accurately describes the development and I note the appellant has used this description on the appeal form and in their statement, therefore no party would be prejudiced by my use of it.
4. The appellant submitted amended plans as part of the appeal¹. The amendments seek to address the Council's reasons for refusal in so far as the internal layout has been reconfigured, the number of bedrooms has been reduced from two to one, an additional window has been shown on the east side elevation, a rooflight has been re-positioned, finished floor levels have been confirmed and a cycle store has been shown in the front garden.
5. Whilst the amended plans were submitted at the outset of the appeal and the Council has provided comment on aspects of the changes, the amended plans are not the plans that were determined by the Council or upon which the views of interested parties were sought. The Procedural Guide to Planning Appeals – England (2016) states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. I have also had regard

¹ Drawing No:1339_320B (Proposed Drawings)

to the judgement in Holborn², including a separate substantive and procedural test, in relation to this matter.

6. In this instance, even if I considered the amendments did not involve a fundamental change to the internal arrangement, the addition of a window on the eastern elevation of the building would markedly alter how the proposal would appear when viewed from the neighbouring residential property. Moreover, no party has had the opportunity to comment on the proposed alterations as part of the appeal process. I cannot therefore be certain that if I was to accept them no party would be prejudiced by my so doing. Accordingly, I have not taken them into account in my assessment of the appeal.
7. The Waltham Forest Local Plan Part 1 – Shaping the Borough 2020-2035 (WFLP1) was adopted by the Council in February 2024 and replaces, in whole, the Waltham Forest Local Plan Core Strategy, adopted 2012 (CS) and the London Borough of Waltham Forest Local Plan Development Management Policies, adopted 2013 (DMP). This appeal was received before the adoption of WFLP1 and as such policies from the CS and DMP have been referred to in the decision notice.
8. However, as part of the appeal process, the Council has provided revised reasons for refusal that have replaced the policies of the CS and DMP with the new policies in the WFLP1. The Council has also removed reference to 'Living with Beauty - promoting health, well-being and sustainable growth', the report of the Building Better, Building Beautiful Commission, Jan 2020 in the first reason for refusal. Reference to the Environment Agency flood risk standing advice (on domestic extensions) in the fourth reason for refusal has also been removed.
9. The appellant has had an opportunity to comment on the Council's revisions to the reasons for refusal. Therefore, in accordance with the National Planning Policy Framework (Framework) I have given full weight to the WFLP1 and have had regard to the proposed changes to the reasons for refusal in my decision.
10. The Council's first reason for refusal refers to a fence that has been erected between the appeal building and Maple Avenue. However, following clarification from the parties regarding the red edge boundary of the site, and from observations at my site visit, this fence does not form part of the proposals before me as it is not within the red edge of the application boundary. Furthermore, it is not for me, under a section 78 appeal, to determine whether or not the fence is lawful. It is open for the Council to address potential unauthorised development elsewhere in legislation, or for the appellants to apply for a determination under sections 191/192 of the Town and Country Planning Act 1990 to determine this matter, and any such action or application would be unaffected by my determination of this appeal.
11. A revised version of the Framework was published 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, other than paragraph numbering. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework from the main parties, and that no party would be disadvantaged by determining the appeal accordingly.

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

Main Issues

12. The main issues are:

- whether the proposed development would provide acceptable living conditions for future occupiers of the proposed development, with particular regard to internal space and outlook;
- whether the proposed development would accord with local and national planning policy regarding flood risk; and,
- the effect of the proposed development on the character and appearance of the host building and the area.

Reasons

Living conditions

13. The proposed development relates to extensions to an existing dwelling. In its revised second reason for refusal, the Council refer to Policy 56 of the WFLP1 which relates to residential space standards. The policy advises that proposals for new homes are required to meet minimum internal space standards. Whilst neither the current overall dwelling size nor the dwelling size that would result from the proposed extension would meet the requisite standard set out at Table 14.2, the proposed development would not be a new home. Similarly, the requirements set out in the Nationally Described Space Standards³ (NDSS) only refer to internal space within new dwellings.
14. The Council also refer to the London Plan Supplementary Planning Guidance – Housing (2016) in relation to space standards. However, this has been superseded in part by the London Plan Guidance - Housing Design Standards, June 2023. Regardless, both these documents refer to the NDSS in relation to internal space standards for new dwellings.
15. Since the proposal would be for extensions, rather than for a new dwelling, the above policy and guidance would not apply in this case. I have not been directed to any other policy of the WFLP1 or guidance that directly relates to the size of rooms or overall floorspace limitations for extensions to existing dwellings.
16. Notwithstanding the above, the proposal would provide an additional room that is indicated on the submitted plans as a second, single bedroom. Even if it was annotated as a study/store room, it could still be used as a bedroom. The proposed front extension would increase the overall size of the dwelling, but it would not alter the fact that the internal space available for occupants of a two bedroom property would be very constrained.
17. Furthermore, the only source of natural light, ventilation and outlook for occupiers of the proposed second bedroom would be from a rooflight.
18. While I recognise that a bedroom is principally a room for sleep, it can also usefully serve as a private room during the day for study, home working, quiet relaxation, and children's play. The proposed rooflight may provide an adequate source of natural light and ventilation, however, its position high within the ceiling would not provide suitable levels of outlook for these

³ DCLG Technical Housing Standards – Nationally Described Space Standard, March 2015 (NDSS).

functions. Consequently, the proposal would result in unacceptably oppressive living conditions for occupants of this room.

19. In terms of the kitchen/living/dining area, it would be open plan and include glazed doors and narrow full length glazed windows along the southern elevation. Even though there are no flank windows to this room, there is nothing before me to suggest the proposed glazed opening would not provide an acceptable outlook given the dimensions relative to the room and the open aspect towards the garden and Maple Avenue. The Council's officer report refers to light and air in relation to the living area but the reason for refusal only refers to outlook. Even so, given the size of the room, the southern orientation of the French doors and windows, which could be openable, I am satisfied living conditions for occupants of this room would be acceptable.
20. Nevertheless, the objective of Policy 48 of the WFLP1 is to promote healthy places by encouraging the delivery of high-quality environments. This is echoed in Policy 57 of the WFLP1 which requires that development should respect the amenity of existing and future occupiers in terms of, amongst other things, outlook.
21. Given the cramped overall size of the resultant two bedroom dwelling and that occupants of the second bedroom would have a severely restricted poor and oppressive outlook, I find the proposal would have a significant adverse effect on the living conditions of future occupiers, with particular regard to outlook.
22. Consequently, the proposal fails to comply with Policies 48 and 57 of the WFLP1, which amongst other things, collectively require development that is of a high quality and avoids harmful impacts on future occupants in relation to outlook. There would also be conflict with Policy D3 of the London Plan, March 2021 which seeks, amongst other matters, that development delivers an appropriate outlook. In addition, the proposal would conflict with guidance in paragraph 135 of the Framework which requires that development ensures a high standard of amenity for existing and future users.

Flooding

23. On the basis of the evidence, the appeal site lies within Flood Zone 2 (FZ2). Policy 91 of the WFLP1 requires a site-specific Flood Risk Assessment (FRA) for all development within FZ2. The policy sets out that this is required to enable an assessment of the risk of flooding to, and arising from, development proposals from all sources, considering flood risk now and in the future. I am satisfied Policy 91 follows the approach in the Framework and advice contained in Planning Practice Guidance (PPG) in relation to flood risk.
24. The proposal would be a small extension to an existing dwelling. Nonetheless, paragraph 174 of the Framework advises that while applications for minor development and changes of use should not be subject to the sequential or exception tests, such development should still meet the requirements for site-specific FRA⁴. This would ensure, amongst other things, the proposed development would be appropriately flood resistant and resilient. No FRA has been submitted.
25. The Council contend that the proposal should satisfy the exception test set out in the Framework. Paragraph 169 of the Framework states that the need for an

⁴ National Planning Policy Framework, Footnote 59

exception test will depend on the potential vulnerability of the site and of the development proposed. Buildings used as a dwelling are classed as 'more vulnerable'. Nevertheless, as set out above, footnote 60 of the Framework and the notes to Table 2 of the PPG⁵ confirm that the exception test does not need to be applied for the development proposed in this appeal.

26. Whilst I note that an FRA was not requested during the application period, the appellant has not disputed that the site is located within FZ2 and the adopted development plan policy is clear in its requirements for an FRA to be submitted for all proposals within FZ2. Even though the floor level of the proposed extension would be the same as the existing floor level, it does not justify the failure to provide a site-specific FRA.
27. The appellant's claim that the proposal would have no impact on flooding is not supported by any formal assessment or evidence, which is a policy requirement. It has also been suggested by the appellant that the proposal complies with the Environment Agency standing advice but because the site is located in FZ2, for the reasons already set out above, an FRA is required.
28. I have considered whether a condition could be imposed to secure appropriate measures in relation to flooding in the event that I find the appeal otherwise acceptable. However, given the absence of an FRA, the requirements of the Framework and development plan policy, it would be necessary for such information be provided prior to the determination of an application.
29. Therefore, for the reasons set out above, the proposal would be contrary to Policy 91 of the WFLP1 which requires development to address and reduce flood risk and its impacts as well as requiring a site-specific FRA for all development in FZ2. The proposal would also be contrary to paragraph 173 of the Framework, which states that where appropriate (including all development in FZ2), applications should be supported by a site specific FRA.

Character and appearance

30. The appeal site is located between a two storey end terraced dwelling, 66 Maple Avenue (No.66) and a block of garages, within a predominantly residential area. The site includes a detached, flat roof, single storey building that accommodates a one bedroom residential unit, and a garden enclosed by a timber fence positioned between the building and Maple Avenue. The building is set back from the frontage of the road, behind the front elevations of the adjacent terrace, roughly in line with the front elevations of the garage block. Directly to the rear of the site is the garden associated with 187 Westward Road, a single storey dwelling.
31. Whilst the scale and appearance of buildings in the surrounding area does vary, there is a general consistency of height, design and proximity to the street of buildings on the south side of Maple Avenue. In contrast, buildings on the north side are varied in appearance and proximity to the street. There are gaps between blocks of dwellings on this side of the road that are interspersed with garages and clusters of vegetation.
32. The proposed ground floor extension to the front of the appeal building (the elevation facing Maple Avenue) would be minimal. Although it would fill the narrow width of the existing dwelling, the proposed large glazed door opening

⁵ Paragraph: 079 Reference ID: 7-079-20220825

in the front elevation would not be overly conspicuous or out of proportion in the context of the scale of the building and the mixed character of buildings and spaces on this side of Maple Avenue. Moreover, the proposed roof alteration would complement the roof arrangement of the adjacent garages, some of which have a pitched roof. I find that the overall appearance of the building would be improved. I am also satisfied that the proposed additions to the building, when taken together, would not be disproportionate to the size and scale of the host building.

33. The Council's Residential Extensions and Alterations Supplementary Planning Document, February 2010 (SPD) sets out the general presumption against approving an application for a front extension. However, the SPD goes on to state that there may be circumstances where a front extension may be appropriate where the street comprises of an irregular building line. I consider this to be the case in this appeal.
34. The appeal building would remain substantially set back from Maple Avenue, behind the front garden. The front elevation of the dwelling would be in line with the adjacent garage block and would not protrude beyond the building line of the adjacent terraced row. In the context of the varied appearance of the north side of Maple Avenue, I consider the proposed development would not diminish the character and appearance of the area.
35. The Council's claim that the proposed increase in bedspaces would erode balance in the character of the area has not been substantiated. It is not clear why a two bedroom property would harm the balance and mix of housing in the area. I therefore give this claim little weight in relation to the character and appearance of the area.
36. Irrespective of the fence currently erected between the appeal building and Maple Avenue, the submitted plans indicate that the front garden would be enclosed by a pedestrian gate and some form of boundary treatment which would align with the front corner of No.66. No details have been provided in respect of the design of boundary treatment. Nevertheless, in the event that I was to allow the appeal, such details could be dealt with by a suitably worded condition.
37. For the above reasons, I consider the proposal would not harm the character or appearance of the host building or area. I am therefore satisfied that the proposal complies with Policy 53 of the WFLP1 and guidance contained in the SPD. Collectively these seek development that is, amongst other things, of high quality design that reinforces local character and distinctiveness and responds appropriately to their context in terms of scale, height and massing.
38. The proposal would also comply with the objectives 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. In addition, the proposal would be consistent with the National Design Guide⁶ as it would respond to the scale, appearance, and form of the local area.

⁶ Ministry of Housing Communities and Local Government, National Design Guide, Planning practice guidance for beautiful, enduring and successful places, January 2021.

Other Matters

39. I note the appellant's frustration regarding the Council's approach to determining the application, including the erroneous reference in the fourth reasons for refusal to Policy CS5 of the CS, which does not relate to flooding. However, the adopted development plan policy and the Framework is clear in its requirements for an FRA to be prepared for all proposals within FZ2.

Conclusion

40. For the reasons given above, the proposed development would conflict with the development plan when read as a whole. There are no material considerations, including the provisions of the Framework, that indicate the decision should be made other than in accordance with the development plan.

41. Accordingly, the appeal is dismissed.

A Veervers

INSPECTOR