

Appeal Decision

Site visit made on 18 July 2024

by A Veevers BA(Hons) PGDipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal Ref: APP/U5930/W/23/3326771

10A Napier Road, Leytonstone E11 3JR

- 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 Asad Chaudhry, Essex Estates and Investment Ltd, against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref is 230522.
 - The development proposed is construction of infill extension and roof alteration to the existing industrial / storage buildings in connection to change of use to mix use and subdivision into office units and industrial / storage (Class B2/B8 and E(g)(i)), with associated bicycle storage, soft and hard landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development provided on the planning application form reads 'infill extension and roof alteration to the existing (B2/B8) industrial / storage buildings including subdivision into office units'. The Council changed the description to that in the banner heading above, which more accurately describes the proposals as shown on the plans. This description was used for the purposes of notification of the application and in the appeal form. I am therefore satisfied that no party will be prejudiced by my use of it.
3. I sought the views of the main parties on the plans considered by the Council as I was provided with different plans to those listed on the decision notice. The matter has been clarified and the relevant plans provided. For the avoidance of doubt, I have proceeded on the basis of the plans listed on the decision notice.
4. Following the refusal of the planning application, the Council adopted the Waltham Forest Local Plan, Part 1, Shaping the Borough 2020-2035, in February 2024 (the Local Plan). The Council has confirmed that this supersedes the policies of the Development Management Policies Local Plan 2013 and the Core Strategy 2012 as relied upon in its decision notice. Accordingly, I have determined the appeal against the relevant policies of the new Local Plan as set out by the Council. The appellant has had the opportunity to comment on the relevant policies through the appeal process.

5. The National Planning Policy Framework (the Framework) was updated in December 2023, after the Council made its decision. Insofar as is directly relevant to this appeal, there are no substantive changes, other than paragraph numbering. Given the date the appeal was submitted, I am satisfied that the main parties were able to address any changes within their submissions.

Main Issues

6. The main issues are:

- the effect of the proposal on the character and appearance of the area;
- whether the proposal would accord with local policies with regard to location;
- the effect of the proposal on highway safety, with particular regard to parking, servicing and construction logistics;
- the effect of the proposal on the living conditions of the occupants of neighbouring dwellings with particular regard to outlook, daylight and sunlight, privacy and noise/disturbance; and,
- whether the proposal would accord with local policies with regards to highway infrastructure and climate change.

Reasons

Character and appearance

7. The appeal site (No 10A) is located to the rear of Napier Road, between the rear of predominantly terraced housing on Napier Road and the rear of terraced properties on High Road. The site comprises of two single storey buildings that are linked by a corrugated sheet canopy. A small part of the southern end of the site appears to include a building directly to the rear of 270 High Road. I was unable to gain access to this building at my site visit, but from the appeal submissions, it is evident that no changes are proposed to this part of the site.
8. The site is accessed from Napier Road, through an under-croft between 8 and 10 Napier Road (Nos 8 and 10). At the time of my site visit, the site was being used for storage, although the land was overgrown and the buildings were in a relatively poor state of repair.
9. The surrounding area is predominantly residential and characterised by traditional two storey terraced properties with narrow rear gardens. The appeal site sits within a narrow gap between rear garden boundaries and is enclosed by walls and fences. The existing buildings are modest in size with low eaves and pitched roofs. The canopy linking the two buildings is not readily visible above surrounding boundary walls, which is a positive feature of the site, as it ensures there is a visible gap between the buildings when viewed from surrounding properties. As such, the overall appearance of the site remains of a domestic scale within this residential setting.
10. The existing canopied structure would be removed and replaced with an extension connecting the two buildings. Each building would be remodelled to

incorporate raised walls and a flat roof. The plans indicate that the floor level of the building would be excavated below existing ground levels. The internal layout would include 4 no small offices, a workshop, storage area and reception.

11. As a result of its location at the rear of properties, the proposed development would be unlikely to be visible in public views from nearby vantage points. However, given the built up nature of the area, it would be visible from many properties on Napier Road, High Road and Ranelagh Road. The appearance of the site when viewed from the surrounding properties would be substantially altered as a result of the proposal.
12. While the overall height of the proposed building would not extend significantly above the height of the existing buildings, due to the increased eaves height and the infill extension between the buildings, the resultant singular building would be of significant length and bulk. The proposed extensions would increase the mass and spread of building form along the boundaries of properties on High Road and Napier Road. The proposed flat roof would do little to moderate the building's sense of scale. Consequently, the building would be highly conspicuous and overly dominant within this back land location.
13. Furthermore, the large central opening and fenestration arrangement to the front elevation would not reflect the regular pattern of openings in the area and would further serve to emphasise the overall scale and mass of the building. The proposal would amount to a form of overdevelopment which would be read as a cramped, incongruous feature within the prevailing urban context.
14. A small area of greenspace is indicated on the submitted plans between the building and the rear garden boundaries of properties along Napier Road. However, it is not clear from the information before me, how these areas would be accessed for occupants of the building, nor how they would be maintained. Although specific details of proposed materials are not provided within the submission, I acknowledge that this matter could be dealt with by a suitably worded condition, in the event that I allowed the appeal.
15. Nonetheless, the objectives of the Council's Urban Design: Supplementary Planning Document, adopted February 2010 (SPD) are clear that development should have regard to the context of its surroundings and be legible. The proposal would be of a scale and mass which would not be compatible with the predominant characteristics of neighbouring residential properties. Thus, the scheme would be inconsistent with these guiding principles and would cause harm to the character and appearance of the area.
16. For the above reasons, I conclude that the proposed development would unduly harm the character and appearance of the area. Accordingly, it would conflict with Policy 53 of the Local Plan. This policy seeks, amongst other things, development that is of high quality, reinforces local character and distinctiveness and responds appropriately to its context in terms of scale, height and massing. The proposal would also conflict with guidance in the SPD and paragraph 135 of the Framework which collectively seek those aims

through well-designed places and developments that are sympathetic to local character and that maintain a strong sense of place.

Location

17. Although the current use of the site is given as Use Class B2¹, and described as workshop land and premises in the application form, this is disputed by the Council, who advise that the site is, and has been, in use for storage by virtue of a previous planning permission². At the time of my site visit, albeit a snapshot in time, the site was overgrown and I saw little evidence of its active use, although doors were stored in one of the buildings, with chairs and timber in the other. The application form states there are no existing employees on the site. On the basis of the information before me and my site visit, and in the absence of any compelling evidence to the contrary from the appellant, I would agree with the Council's assertion that the site is in limited use for storage.
18. Policy 28 of the Local Plan sets out the Council's approach to non-designated employment land and is generally supportive of high-quality employment space and upgrades to existing poor quality or old stock. However, the proposal includes office space. Policy 39 of the Local Plan requires that applicants undertake a sequential assessment to justify new office development outside a designated centre. The appeal site lies outside a designated centre and no such assessment has been provided by the appellant. Without an assessment of the site's suitability for its proposed use, even if I considered the proposal to be an upgrade in terms of the repair and extension of existing buildings, the impact the use may have on designated town, district and neighbourhood centres remains uncertain.
19. It has therefore not been demonstrated that there are no available and suitable alternative sites in accordance with the sequential approach to the location of new office development. As such, the proposal conflicts with Policy 39 of the Local Plan which seeks, amongst other things, that designated centres should be the preferred locations for new retail, office, workspace, leisure and other service uses. There would also be conflict with paragraph 91 of the Framework which states that a sequential test to planning applications for main town centre uses should be applied.

Highway safety

20. Access to the site would be from Napier Road, below an under-croft of the adjacent terraced property. The access is narrow and flanked by residential properties with short front gardens. No vehicle parking is proposed within the site and no indication of proposed staff or visitor numbers has been provided, nor any details about the specific nature of the uses or servicing/delivery requirements. Whilst I recognise the current site has a commercial use and the proposed access would be the same as existing, the proposal would result in a larger building and floorspace than that which currently exists, and include a varied mix of uses. Thus, the use of the site would be likely to be intensified.

¹ of The Town and Country Planning (Use Classes) Order 1987 (as amended).

² LPA Ref: 831080

21. Napier Road and surrounding streets are located within a Controlled Parking Zone (CPZ) where on-street parking is reserved for permit holders only. The site is located within reasonable proximity to two train stations and bus routes along High Road. Nonetheless, in the absence of substantive evidence about parking arrangements for staff and visitors, I cannot be certain that unacceptable pressure on the local highway and other parking within the surrounding area would not occur.
22. Furthermore, due to the restricted space available within the site and the narrow access, it is clear that servicing/deliveries would be likely to take place on Napier Road, a predominantly residential street. There would be limited space within the carriageway for vehicles to safely park, even for a short time, without causing an obstruction to the free flow of traffic. The effect of service or delivery parking on the road would also be complicated by the presence of a cycle storage facility close to the access to No 10A. On the basis of the information presented, I find that it has not been demonstrated to me that the servicing and delivery needs of future occupiers of the development could be safely accommodated.
23. Furthermore, in terms of highway safety, the Council's fourth reason for refusal refers to an absence of an outline construction logistics plan (CLP) to demonstrate how the proposed development would be constructed without harm arising to the free flow of traffic on the highway network. It is noted by the highway authority that the existing undercroft would restrict access for moving materials to and from the site.
24. Policy 65 of the Local Plan refers to the need for a CLP, where applicable, to minimise the impact of construction logistics on the road network. Although the appeal site is already in commercial use, the objectives of the policy would be relevant to this appeal, given the scale of the proposal in the context of the confined width and height of the access and the limited space to manoeuvre within the highway.
25. While I recognise that the construction period would be likely to be short term, I have no substantive evidence before me to demonstrate that the development would provide an inclusive and safe access for pedestrians or cyclists during the construction phase or that it could be constructed without significant adverse effect on the local highway network.
26. To conclude on this main issue, it has not been demonstrated that acceptable provision for staff/customer parking or the delivery/service requirements of the proposed development during or following construction would be made. Therefore, the potential for displacement parking and the parking of service/delivery and construction vehicles within the highway would be likely to compromise the free flow of traffic on the local road network.
27. Accordingly, the proposal would have an unacceptable adverse effect on highway safety, with regard to car parking, servicing and during construction, in conflict with Policies 53, 60, 61, 64, 65 and 66 of the Local Plan. Amongst other things these policies require development to contribute to the Council's objective to deliver more attractive, accessible and safe streets and to minimise the adverse impacts of development, including from deliveries and from construction, on the local transport network.

28. The proposal would also conflict with Policies T4 and T7 of the London Plan which, amongst other matters, requires that CLPs are provided, that development does not increase road danger and adequate off-street space for servicing, storage and deliveries is facilitated. The proposal would also conflict with guidance in the SPD and paragraph 114 of the Framework which both seek that development has an acceptable impact on highway safety.

Living conditions

29. The appeal site is surrounded by residential properties, several of which extend up to the boundary with the appeal site. I observed at my site visit that several first floor windows on the rear outriggers of properties on High Road and Napier Road directly face towards the site at close proximity. Some of these windows are obscurely glazed but those at 2 to 12 Napier Road (Nos 2 to 12) and 282 High Road are clear glazed. Moreover, the rear garden of 282 High Road (No 282), and those at Nos 2 to 12 directly adjoin the appeal site.
30. These rear gardens are partially enclosed by boundary walls and neighbouring single storey extensions. However, the increased height and mass of the proposed building would loom over the rear gardens of No 282 as well as Nos 8 and 10. As a result, I consider the overall scale of the building, including the forward projection across the full width of the gap between Nos 8 and 10, would have an overbearing effect on the outlook of occupants within the ground floor rear rooms of No 282 and Nos 8 and 10.
31. The proximity and scale of the proposed building would be likely to restrict daylight and sunlight reaching ground floor windows and gardens of No 282 and Nos 8 and 10. No daylight or sunlight assessment has been submitted. I find there is therefore insufficient evidence to support the appellant's claim that the proposal would not compromise the living conditions of occupiers of surrounding residential properties with regard to daylight and sunlight.
32. In terms of privacy, the rear and side elevations of the proposed building would not contain windows. However, on the basis of information provided with the appeal, even though the submitted plans do not show a full front elevation, it is apparent that this elevation would contain vertical windows from floor to ceiling. The upper part of these windows would be obscurely glazed and existing boundary treatment at the rear of gardens of Nos 2 to 12 would prevent overlooking between occupiers of the proposed building and occupiers of these properties at ground floor level. Nevertheless, the clear glazed section of each window would project above the height of boundary features. Due to the limited distance between Nos 2 to 12 and the proposed building, some overlooking towards the first floor windows of these properties would be likely to occur .
33. Moreover, the entrance hall and reception area of the proposed building would include a significant amount of clear glazing that would directly face the rear first floor windows of Nos 8 and 10. Some overlooking is expected and tolerable in residential areas and already occurs to some degree at the appeal site and surrounding properties. However, overlooking from the large, glazed entrance of the building towards these properties would be

significant and would unacceptably infringe on the privacy of the occupiers of Nos 8 and 10.

34. In terms of the use of the site, I have not been provided with information concerning any controls or limitations on its existing use. Nor has information been provided in relation to proposed staff numbers or hours of operation.
35. While the appellant has indicated that the proposal would not give rise to any noise, there is insufficient evidence to support this claim, as well as little information to confirm whether internal noise levels from customers, employees and other operations of the proposed uses would not compromise the living conditions of occupiers of neighbouring residential properties. As such, I cannot be certain of the level of noise and disturbance that would be likely to be generated as a result of the proposal.
36. Even if the site is currently in use on an unrestricted basis and, in the event I was to allow the appeal, the proposed hours of use could be restricted by condition, the introduction of a large building that would include general industrial, office and storage uses within a limited space, would be likely to introduce noise and disturbance to the immediate area. There would be noise arising from the comings and goings of customers and staff, in addition to potential noise spill from activity inside the building. Given the close relationship with surrounding residential properties, comings and goings would be obvious and noticeable, leading to the potential for residential occupiers in the area being adversely disturbed.
37. I acknowledge that the appeal site is already in commercial use. Nevertheless, no compelling evidence is before me to indicate the proposal would not give rise to a level of noise and disturbance that would be harmful to living conditions for residents in the immediate area.
38. For the above reasons the proposed development would be harmful to the living conditions of the occupants of neighbouring residential properties with particular regard to noise and disturbance. It would also be harmful to the living conditions of the occupants of No 282 and Nos 8 and 10 with regard to outlook, daylight and sunlight; and to the occupants of Nos 2 to 12 with particular regard to privacy.
39. I therefore conclude on this main issue that the proposed development would fail to accord with Policy 57 of the Local Plan which seeks, amongst other things, that development respects the amenity of existing and future occupiers, neighbours and the surrounding area. The development would also conflict with guidance at paragraph 135 of the Framework insofar as it requires development to be of a high standard of amenity for existing and future users.
40. The Council refers to the Waltham Forest Residential Extensions and Alterations - Supplementary Planning Document, February 2020 in relation to this main issue. However, as this is concerned with alterations to residential properties, I do not find it to be directly determinative in this appeal.

Highway infrastructure and climate change

41. The Council's sixth reason for refusal relates to the absence of a planning obligation relating to a condition survey of the local carriageway and footway, works to the dropped kerb and yellow line fronting the appeal site, a financial contribution towards the Council's Carbon Offset Fund in the event the development fails to meet the relevant BREEAM³ standard, and a financial contribution towards monitoring of the planning obligation.
42. The Waltham Forest Planning Obligations Supplementary Planning Document, May 2017 (POSPD) sets out the Council's approach as to how planning obligations and section 106 agreements⁴ secure the infrastructure contributions required to support growth in the borough of Waltham Forest. Policies 60, 61 and 63 of the Local Plan are concerned with, amongst other things, highway infrastructure and safety matters.
43. With regards to the requested section 106 Agreement to secure a condition survey of the carriageway and footway fronting the appeal site prior to commencement of any development, I have no reason to conclude that the carriageway and footway are in an unacceptable condition or would be made worse as a consequence of the proposed development. While a condition survey may well be a requirement of the POSPD, and Annex 2 Glossary of the Framework states that supplementary planning documents are capable of being a material consideration in planning decisions, they are not part of the development plan. The proposal is not a major development⁵ and I have not been directed to a relevant policy that requires a condition survey to be submitted for the proposed development.
44. The requirements to remove the existing dropped kerb and re-instate the footway to full height but to also reinstate a small width of dropped kerb for cycle access and possible deliveries is not clear. On the basis that no vehicle parking is proposed within the site, and that the existing access is already very limited in width and would allow cycle access across the dropped kerb, it has not been demonstrated that the removal or alteration of the existing crossover or single yellow line is necessary.
45. In terms of the requested financial contribution towards the Council's Carbon Offset fund, the POSPD states that the reduction of carbon dioxide emissions should be addressed as part of each planning application. It goes on to advise that if requirements cannot be met on site, a contribution will be required to be provided in agreement with the Council as a planning obligation, to be expended by the Council as part of a carbon offset fund. However, the Council's officer report states that a suitable condition could be imposed, in the event the application was approved, to require that the proposed development achieves an acceptable BREEAM standard.
46. Paragraph 55 of the Framework advises that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Thus, from the evidence before me, this matter could be dealt with by an appropriately worded condition, were I to allow the appeal.

³ Building Research Establishment Environmental Assessment Method

⁴ section 106 of the Town and Country Planning Act 1990 (as amended)

⁵ Annex 2 Glossary of the National Planning Policy Framework

47. Finally, while not directly referenced in the decision notice, the highway authority submit that a financial contribution towards the monitoring of a CLP is necessary. However, I have been provided with no precise detail in relation to what monitoring would be necessary or, why the Council would be unable to undertake such monitoring without a specific financial contribution.
48. To conclude on this main issue, it has not been demonstrated that a planning obligation for the purposes of ensuring a condition survey of the local carriageway and footway, works to the dropped kerb and yellow line fronting the appeal site, a financial contribution towards CLP monitoring, or a financial contribution towards the Council's Carbon Offset Fund would be necessary, directly related to the development or fairly and reasonably related in scale and kind to the development. Therefore, the statutory tests of paragraph 57 of the Framework have not been met⁶. Moreover, it has not been demonstrated that a planning obligation would be necessary for the development to comply with Policies 60, 61 and 63 of the Local Plan with regards to highway infrastructure or climate change.

Other Matters

49. The appeal site would be in an accessible location and is previously developed land in a poor condition. The Framework aims to promote the effective use of land. Paragraph 124 of the Framework indicates that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and that they should promote and support the development of under-utilised land and buildings. This weighs significantly in favour of the appeal scheme.
50. The appeal proposal would provide flexible employment floorspace and contribute to creating jobs and stimulating economic development. There would also be job creation through the construction and operational phases. The proposal would support the aims of the Framework in these regards. However, I am mindful of the possibility that economic benefits could arise from locating the proposed development on an alternative brownfield site, a sequentially preferable site, or by an alternative scheme on the appeal site with less harmful impacts. Furthermore, given the modest increase in floorspace over and above that which currently exists on the site, I attach these benefits modest weight.
51. I acknowledge 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.
52. The appellant indicates that the proposal would meet the requirements of Lifetime Homes, incorporated into Building Regulations. However, the proposal would not be for new homes and, in any event, compliance with relevant Building Regulations is an expectation of development rather than a benefit.
53. I note from the Council's officer report that there has been a previous appeal at the site⁷. However, this related to residential development and is

⁶ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

⁷ Appeal Ref: APP/U5930/W/22/3306356

therefore not directly comparable to the appeal before me. I am also aware from the submissions and observations at my site visit, that a development of 2no self-contained residential units close to the appeal site at 22A Napier Road (No 22A) has been constructed⁸. While there are some similarities in terms of the building footprint and the back land location of that site with the appeal site, the residential use of No 22A and the distance between the building at No 22A and surrounding properties are not the same. As such, that scheme is materially different to the appeal scheme and does not weigh in its favour.

Planning Balance and Conclusion

54. The adverse effects of the proposal I have set out in the main issues above are considerable. Taking all factors into account, I find that the benefits of the proposal are insufficient to outweigh the harm that I have identified in relation to the main issues in this case.
55. The proposed development would conflict with the policies of the development plan when considered as a whole. There are no material considerations, either individually or in combination, of such weight to lead me to conclude otherwise.
56. Accordingly, the appeal is dismissed.

A Veevers

INSPECTOR

⁸ LPA Ref: 153763