

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: 06 September 2024

Appeal Ref: APP/U5930/W/23/3332556

Land Adjacent to 24 Courtenay Road, Leytonstone E11 3PY

- 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 Ms Boatswain against the decision of the Council of the London Borough of Waltham Forest.
 - The application ref is 221356.
 - The development proposed is construction of two storey end of terrace building to provide 1 x 2-bedroom single dwelling house with associated soft and hard landscaping, two car parking spaces, refuse/recycling and bicycle storages.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development provided on the planning application form reads 'construction of 1 x 2 bedroom house on vacant brownfield site'. 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 has been used in the appeal submissions by the appellant. Consequently, I am satisfied that no party will be prejudiced by my use of it.
3. 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 (WFLP). 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, and has provided revised reasons for refusal, having regard to relevant policies of the WFLP, within their appeal statement. The appellant has had the opportunity to comment on the relevant policies through the appeal process. Accordingly, I have determined the appeal against the policies of the WFLP.
4. 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.

5. An amended Design and Access Statement (DAS) has been provided by the appellant at the appeal stage. The DAS provides clarification that the proposal is for a 2-bedroom house. The DAS does not alter the proposal and the Council and third parties have had the opportunity to comment upon it. I am satisfied that no prejudice would occur to any party as a result of my consideration of its content.
6. The Council's fifth reason for refusal refers to the absence of a planning obligation¹ in relation to various matters. One such matter is concerned with the integrity of the Epping Forest Special Area for Conservation, a European protected site. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the competent authority to consider whether or not the proposal could adversely affect the integrity of the protected site, either alone or in combination with other plans and projects within the framework of an Appropriate Assessment (AA). This responsibility falls to me in the context of this appeal.

Main Issues

7. The main issues are:

- the effect of the proposed development on the character and appearance of the area;
- whether the proposed development would provide acceptable living conditions for future occupiers, with particular regard to private outdoor amenity space, configuration of internal living space, outlook, daylight, sunlight and privacy;
- the effect of the proposed development on the Epping Forest Special Area for Conservation (SAC);
- whether the proposed development would have an adverse effect on parking stress, highway infrastructure, sustainable modes of transport and climate change; and,
- whether the proposed development makes appropriate provision for refuse/recycling storage and cycle parking.

Reasons

Character and appearance

8. The appeal site is a triangular-shaped parcel of land at the end of a row of traditional two storey, bay-fronted terraced properties. The terraced row is set back from Courtenay Road behind long narrow gardens, which are angled from the main front elevations towards the road. The southern boundary of the site is flanked by a two storey brick flank wall of a school building which forms part of Buxton School. Evidence indicates that 24 Courtenay Road (No 24) is separated into two flats, No 24A on the ground floor and No 24B on

¹ s106 Town and Country Planning Act

the first floor. There are two single storey detached dwellings at the rear of the site, 1 and 2 Jenny Hammond Close (Nos 1 and 2).

9. The site is located close to vehicular access gates into Buxton School and its car parks. Opposite the appeal site is a car hire/sales/repair garage which is located within an arch of the railway which passes over Courtenay Road. The area is therefore mixed in character.
10. Although the proposed dwelling would respect the existing rhythm of the terraced row by continuing the same eaves and ridge height and would be constructed with similar materials to the terrace, part of the first floor would project forward of the ground floor and the building line of the terrace. Furthermore, the proposed first floor fenestration arrangement facing Courtenay Road is unclear from the submitted plans. The front elevation section drawing (Ref 18.246.207 B) indicates the faint outline of a window but this not shown on the proposed first floor layout plan (Ref 18.246.201 F). Even if a window is proposed within this elevation, the overhang of the first floor above the ground floor entrance to the dwelling would result in an awkward and discordant feature at the end of the otherwise cohesive terraced row.
11. I recognise that the proposed dwelling would be set back a substantial distance from the road, thus the proposal would not be overly prominent when viewed from Courtenay Road. The site is not within a conservation area, or in proximity to any other heritage asset. Nevertheless, the rhythm and composition of the terrace at first floor would be perceptibly harmed when viewed from the road. There would be limited opportunity for landscaping to the frontage of the property due to the amount of refuse/recycling and cycle parking required for occupants of the appeal property and those at No 24, along with the parking requirements for occupants of No 24.
12. In addition to the design of the proposal, I note that the rear gardens of the terraced row are narrow and elongated. The footprint of the proposed dwelling would fill a considerable amount of the plot. The resulting external space at the rear of the dwelling would be markedly different in form to that of the terraced row.
13. Due to the limited distance between the proposed dwelling and Nos 1 and 2, the overall height and mass of the dwelling would tower over these properties. The proposed dormer on the rear roof slope would further exacerbate the prominence of the building when viewed from these properties. While the proposal itself would not appear dominant in public views along Jenny Hammond Close or Newcomen Road, because of the confined size of the plot and the scale of the proposed dwelling, it would appear uncharacteristically cramped in comparison to neighbouring development.
14. For the above reasons, the proposed development would unacceptably harm the character and appearance of the area. It would fail to accord with Policies 5 and 53 of the WFLP as well as Policies D1 and D4 of the London Plan. These, in part, require development to be of high quality design which responds appropriately to its context in terms of scale, height and massing.

15. It would also be contrary to paragraph 135 of the Framework which requires development to function well and add to the overall quality of an area and to be sympathetic to local character.

Living Conditions

16. There is no dispute between the parties that the internal space standards set out in Policy 56 of the WFLP and the Technical Housing Standards – Nationally Described Space Standards, March 2015 (NDSS) would be met. From the information before me I have no reason to disagree.
17. In terms of external space standards, Policy 56 of the WFLP requires new homes to provide a minimum of 50 square metres (sqm) of private external amenity space. The proposal would provide 35sqm of private external amenity space at the rear of the proposed dwelling. It would therefore fail to comply with Policy 56. In addition, due to the height of the adjacent school building and the proposed dwelling, the limited depth of the external space and the orientation of the sun, much of this space would be overshadowed.
18. The appellant draws my attention to the relatively large amount of outdoor amenity space that would be provided at the front of the dwelling. However, this area would also be shared with occupants of No 24, would include vehicle parking and storage for refuse/recycling and cycles, and would not be private. Even if few people pass directly in front of the appeal site, and the frontage would be partially screened to the south by the boundary fence of Buxton School, it would be clearly visible to passing pedestrians, cyclists and those in vehicles when accessing the school or other properties and businesses on the street.
19. Wanstead Flats is within a 5-minute walk from the property. Although this is a large area of public open space, it would not compensate for the lack of private outdoor amenity space for a family dwelling.
20. While not specifically detailed within the reasons for refusal, the Council's officer report outlines a concern in relation to the effect on future occupants of the scheme with regard to outlook, privacy, daylight and sunlight. The submitted sunlight impact study shows that there would be no harmful effect on the living conditions of occupants of neighbouring properties in relation to sunlight and daylight as a result of the proposal. However, no assessment in relation to the effect of daylight or sunlight for future occupants of the proposed dwelling when inside the dwelling has been provided.
21. The orientation of the sun, the height and proximity of the flank wall of the adjacent school building, and the limited depth of the external amenity space and proximity of boundary fences would be likely to lead to significant overshadowing of the ground floor rear window and the outdoor external area of the proposed dwelling for a large part of the day and year. This would result in a gloomy room for occupants until late in the day.
22. In the absence of a daylight and sunlight assessment, the impact on the living conditions of future occupants of the proposed dwelling, particularly the ground floor kitchen/dining area, remains uncertain. It has therefore not been demonstrated that future occupants of the proposed dwelling would receive an acceptable level of daylight and sunlight.

23. Whilst I note the Councils' concerns in relation to the shape and configuration of internal living space, it is not unusual to find the kitchen/dining area on a different floor to the main living room in a residential property, nor for internal space to be irregular in shape. The proposed dwelling would be dual aspect and I find the size and shape of the bedrooms and living areas to be commensurate in size to those of the terraced row and would be useable for the day to day requirements of occupants.
24. In relation to outlook and privacy, it would not be so detrimental as to result in poor living conditions in these regards, particularly given that the main living area and bedrooms would be at first and second floor level with views over the front driveway and a single storey building at the rear. Given the ground floor kitchen/dining room would include two windows/doors, even though the private outdoor area would be bound by a fence, I consider that adequate levels of outlook and access to the amenity area serving the property would be provided. Similarly, due to the angle of the proposed rear and front facing windows and the relationship between these windows and neighbouring properties and gardens, I am satisfied that there would be no significant overlooking towards the proposed dwelling.
25. Taking the above matters together, I have found the shape and configuration of the proposed internal living space and the outlook from the property would not be harmful to the living conditions of the future occupants of the property, nor would there be a loss of privacy for future occupants. However, the lack of harm in these regards would not overcome the harm I have identified in relation to a lack of adequately sized private outdoor amenity space for future occupants of the dwelling. Furthermore, without an assessment of daylight and sunlight, I cannot conclude that the proposal would be acceptable in this regard.
26. Consequently, the proposal would not provide acceptable living conditions for future occupiers of the proposed dwelling, with particular regard to private outdoor amenity space, daylight and sunlight. It would be contrary to Policy 56 of the WFLP which, amongst other matters, requires that developments provide an appropriate amount of well designed, suitably located and usable private amenity space for future occupants. It would also be contrary to Policy D6 of the London Plan which, amongst other matters, advocates development that provides sufficient daylight and sunlight to new housing that is appropriate for its context, whilst avoiding overheating, minimising overshadowing and maximising the usability of outside amenity space.
27. The proposal would conflict with guidance at paragraph 135 of the Framework, which states that development should create a high standard of amenity for existing and future users.

Epping Forest SAC

28. It is understood from the Council's officer report that the appeal site falls within the 'Zone of Influence' (ZOI) for the SAC. The Council's fifth reason for refusal refers to the absence of a planning obligation to secure, amongst other things, a financial contribution towards Strategic Access Management Measures in relation to the SAC.

29. Policy 94 of the WFLP requires development to make adequate contributions towards measures to directly mitigate their impact. In order to avoid and mitigate any potential negative effects resulting from recreational pressure, Policy 81 of the WFLP states that all new residential development comprising 1 or more new homes within the ZOI contributes to the delivery of, amongst other things, the Strategic Access Management and Monitoring Strategy (SAMMS) in line with the mitigation measures agreed with the Conservators of Epping Forest and partner authorities.
30. This is because the SAC is under significant pressure from recreational visitors. The justification text to Policy 81 advises that the SAC comprises ancient woodland and acid grassland and is the largest open space in London. Visitor numbers to the forest would increase due to the delivery of new housing and employment developments in the surrounding area. The increase in recreational pressure can lead to such issues as a rise in wildfires, the introduction of incompatible plants, nutrient enrichment from dog fouling, loss of vegetation, damage to trees from trampling and climbing, and soil erosion and compaction. Accordingly, disturbance by humans and their pets, can have an adverse effect on the SAC.
31. The proposal would result in an increase in one dwelling. The appeal site's location within ZOI indicates there would be a likelihood of future occupiers of the proposed dwelling visiting the SAC. Indeed, the Council identifies that all new residential development within the ZOI constitutes a likely significant effect on the sensitive interest features of the SAC through increased recreational pressure, either when considered 'alone' or 'in combination' with other plans or schemes.
32. The Council indicate that a SAMMS contribution of £627 per unit from all new residential schemes would be required. From the information before me, the contribution would be policy relevant and compliant, and the quantum is clearly identified. Therefore, in principle, I see no reason to disagree. Nevertheless, I have not been provided with a mechanism, such as a planning obligation, which would secure the necessary financial contribution for the appeal proposal.
33. In the absence of such a mechanism, I cannot ascertain that the necessary mitigation would be adequately secured and no other solutions have been put to me. As competent authority, the scheme must therefore be considered as likely to result in adverse effects on the integrity of the SAC.
34. Accordingly, the proposed development would result in harm to the integrity of the SAC, contrary to the expectations of the Habitats Regulations and Policy 81 of the WFLP. This policy, amongst other things, seeks to ensure there is no adverse effect on the integrity of the SAC from development proposals; and where a development would have likely significant effects, contributions towards off-site mitigation measures will be sought to make the development acceptable. The proposal would also conflict with Policy 94 of the WFLP insofar as it relates to this main issue and seeks the aims I have set out above.

Planning Obligations - parking, highway infrastructure, sustainable modes of transport and climate change

35. In addition to the absence of a planning obligation to secure a SAMMS contribution as set out above, the Council's fifth reason for refusal also refers to the absence of a planning obligation to secure the following: car free development, a condition survey of the carriageway and footway adjoining the appeal site, a financial contribution towards sustainable modes of transport, removal of the existing access and replacement dropped kerb, and a financial contribution towards the Council's Carbon Offset Fund in the event the proposal fails to meet a 35% reduction in carbon emissions over and above 2013 Building Regulations.

Parking

36. The appeal site is located within a Controlled Parking Zone (CPZ) and no on-site parking spaces would be provided for occupants of or visitors to the proposed dwelling as part of the proposal. Two off-street parking spaces are shown on the submitted plans. However, evidence indicates that these spaces have historically been provided for occupants of No 24. In any event, Policy 66 of the WFLP requires all new residential development to be car-free.
37. To deliver a car-free development, a mechanism is required to ensure that occupiers of the proposed development would not be eligible to apply for a parking permit within the CPZ operating within the area, unless there was an exceptional reason such as they were a Blue Badge holder. Without ensuring the parking permit ineligibility, it has not been shown to me that the occupants of the development could not apply for parking permits with the consequential increases in demand for on-street parking that would result.
38. Therefore, and on the grounds of delivering a car-free development, I have no reason to conclude that a planning obligation is not necessary to make the development acceptable in planning terms. It would be required so that the development complied with Policy 66 of the WFLP and the guidance contained within the Waltham Forest Planning Obligations Supplementary Planning Document, May 2017 (POSPD).
39. Accordingly, I conclude that in the absence of a signed legal agreement, the proposal would not meet the requirements for car free development. It would conflict with Policy 66 of the WFLP and the POSPD, which set out that, where necessary, the Council will seek a planning obligation in order to ensure development would be car-free.

Highway infrastructure

40. In addition to providing guidance in relation to car-free development, the POSPD sets out the Council's approach as to how planning obligations secure the infrastructure contributions required to support growth in the borough of Waltham Forest. Policies 3 and 94 of the WFLP require, amongst other things, that development makes adequate contributions towards viable provision for infrastructure that is necessary to accommodate additional demands arising from growth, including, at criterion F, that developers contribute towards such infrastructure and/or towards measures to directly

mitigate their impact through planning obligations. These policies are consistent with paragraph 34 of the Framework with regards to development contributions.

41. Running alongside the frontage of the appeal site is a footway, together with a dropped kerb crossover. Double yellow line road markings also run along the carriageway in front of the site. Based on the evidence before me and my own observations on site, I have no reason to conclude that the footway and the yellow lines are in an unacceptable condition. The existing site includes parking for occupants of No 24. The need to remove or otherwise alter the existing crossover is not clear to me. Since no alterations to the crossover have been shown to me as being necessary, there would also be no consequential effects upon the yellow lines nor the footway.
42. The Council submit that a condition survey of the adjoining carriageway and footway is necessary. However, 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 development² and I have not been directed to a relevant policy that requires a condition survey to be submitted for the proposed development.
43. The Council also require a financial contribution towards sustainable transport measures. However, no justification or evidence that an assessment has been carried out by the Council to demonstrate that the contribution is necessary to make the development acceptable is before me and I have not been directed to a relevant policy that requires a contribution for this purpose to be submitted in this case. Therefore, it has not been demonstrated that the statutory tests of paragraph 57 of the Framework would be met in this regard.

Climate change

44. 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 carbon emission standard.
45. 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. From the evidence before me, the requirement to meet this matter could be dealt with by an appropriately worded condition, in the event I allowed the appeal.

² Annex 2 Glossary of the National Planning Policy Framework

46. To conclude on this main issue, it has not been demonstrated that a planning obligation for the purposes of ensuring the removal of the existing crossover, the renewal of the footway and the yellow lines, a condition survey of the carriageway and footway, or a financial contribution towards sustainable transport modes or carbon offset fund would be necessary to comply with Policies 3 or 94 of the WFLP. However, in the absence of a suitable mechanism to ensure the development would be car free, the proposal would conflict with Policy 66 of the WFLP. The Council refer to conflict with Policy 65 of the WFLP. However, this relates to the provision of a construction logistics plan which has not been raised as a concern by the Council. I therefore find that this policy is not directly relevant to this main issue.

Refuse/recycling storage and cycle parking

47. Due to the length of the front driveway, there would be sufficient space to accommodate the covered refuse/recycling and cycle parking requirements of occupants of the proposed dwelling and those at No 24. In the event that I were to allow the appeal, the details of the height, design and position of the refuse/recycling and cycle parking structures could be provided by an appropriately worded planning condition. Although it would mean that there would be a longer run of structures to accommodate these items than that shown on the submitted plans, I am satisfied that the visual appearance of the structures would not be harmful. They would be flanked by the fence and railings of the adjacent school and set back from the street.
48. Moreover, I saw at my site visit that the refuse/recycling bins belonging to most of the properties on the terraced row were also stored within front gardens. In this context the presence of the refuse/recycling and cycle storage structures would not be unexpected or detrimental to the character and appearance of the area.
49. For the above reasons, I conclude that the proposal would therefore accord with Policy 93 of the WFLP with regard to matters relating to refuse/recycling. This policy seeks, amongst other matters, that development provides accessible, adequate and well-designed storage facilities for residual waste and recycling. The proposal would also accord with Policies 60 and 61 of the WFLP which, amongst other things, seek to deliver sustainable transport initiatives which support a shift to active travel modes and encourage an increase in walking and cycling.

Other Matters

50. My attention has been drawn by the appellant to a development that was granted permission by the Council on land adjacent to 19 Courtenay Road. Whilst I am unaware of the specific circumstances in this case, I was able to see the recently erected dwelling on this site from Courtenay Road and Neville Close at my site visit. Given the development's scale, plot size and relationship with its host dwelling and the adjacent railway viaduct, it is significantly different from the development before me. Regardless, the fact that apparently similar development has been granted permission is not a reason, on its own, to allow unacceptable development. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

51. I note the appellant's engagement with the Council in respect of pre-application discussion and that the scheme has been amended as a result of these discussions. However, this has had no bearing on the outcome of this appeal, as I have only had regard to the planning merits of the proposal that is before me.

Planning Balance and Conclusion

52. The proposal would deliver one dwelling, which would make a contribution to the Government's objective of significantly boosting the supply of homes which is set out in the Framework. It would do so on a site which would have good access to public transport and would utilise land on which there is currently no development. There would be some economic and social benefits arising including during construction and from the spend of future occupants in the economy. Given that only one new dwelling would be provided, these considerations carry moderate weight in support of the proposal.
53. That there were no refusal reasons relating to the living conditions of neighbouring residents is a neutral factor.
54. The development would cause significant harm to the character and appearance of the area and would fail to provide acceptable living conditions for future occupiers, with particular regard to private outdoor amenity space, daylight and sunlight. It has also not been demonstrated that the proposal would not harm the integrity of the SAC, nor is there a suitable mechanism before me to ensure the development would be car free. Consequently, it would fail to accord with Policies 5, 53, 56, 66, 81 and 94 of the WFLP as well as Policies D1, D4 and D6 of the London Plan, and would be contrary to the expectations of the Habitats Regulations. Balanced against this it would provide the benefits I have outlined which collectively offer moderate weight in its favour. However, those benefits do not outweigh the harm that would result and the conflict with the development plan.
55. In conclusion therefore, I find that the other considerations in this case do not indicate that a determination should be made otherwise than in accordance with the development plan. Therefore, the appeal should be dismissed.

A Veevers

INSPECTOR