



Appeal Decision

Site visit made on 9 October 2024

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/U5930/W/24/3343542

37 Orford Road, Waltham Forest, Walthamstow E17 9NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Michael Seedin against Waltham Forest London Borough Council.
 - The application Ref is 232089.
 - The development proposed is the erection of a ground floor extension and air extraction and ventilation system.
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Decision

1. The appeal is dismissed, and planning permission refused.

Applications for costs

2. An application for costs was made by Mr Michael Seedin against Waltham Forest London Borough. This application is the subject of a separate Decision.

Procedural Matters

3. The main parties disagree as to the lawful use of the existing rear extension of the host building within the appeal site. The appellant considers it to fall within use class E as per the front portion of the appeal site, a café. Whilst the Council consider it to be nil use. From that submitted the intention is to use the proposal as part of the existing café, accordingly I have considered it in this light. Nevertheless, it is not for this appeal to determine the lawful use.
4. The existing and proposed plans show the same windows in the side elevation which would face 35 Orford Road. These are, however, differently sized to those I viewed in existence on site. One is higher and smaller with 2 panes, and one has 3 panes. As there is a clear discrepancy with the windows shown on the plans and those in existence, I have considered those shown on the existing plans drafting errors. The appellant asserts they do not intend to replace these windows, but I have a duty to deal with the scheme in front of me, including the submitted plans.

Main Issue

5. The main issue is the effect of the proposed development on the living conditions of those surrounding the appeal site.

Reasons

6. The appeal site constitutes a two-storey building with mansard roof, in a terrace of similar buildings. To the rear there is a single storey extension (the existing extension) in poor repair, and to the side of that an area of outdoor space. The existing extension and outdoor space wrap 2 sides of the rear garden of 35 Orford Road, a residential property. There is access from the existing extension into a shared alleyway which also serves 39 and 41 Orford Road, both of which have commercial uses at ground floor. The rest of the appeal site is enclosed by the gardens of other residential properties on Eden Road and Orford Road.
7. It is noted that the rear outdoor space enjoys a reasonably quiet environment with the surrounding buildings absorbing much of the day-to-day background noise associated with an urban area of this nature. This would also be the case for the neighbouring properties' gardens, including No. 35.
8. The proposed extension would be single storey and largely replicate the footprint and form of the existing extension. It would also include a conservatory which would open out into the existing outdoor space, and the replacement of 2 windows which would face into the rear garden of No 35.
9. The window closest to the rear elevation of No. 35 would be increased in size, and a mechanical air intake would be installed in the second window. As these windows service a corridor, they could be conditioned to be obscure glazed and none-opening thus retaining the privacy of No. 35's garden.
10. However, the introduction of a mechanical air intake could have a harmful impact in terms of noise and vibration, thus altering the relatively quiet of No. 35's garden. The proposed mechanical air take is described in the document produced by Fan Rescue¹ which refers to a noise impact assessment by Venta Acoustics which has not been submitted.
11. Without that specific technical assessment, I am unable to ascertain the potential noise and vibrational impact of the mechanical air intake, nor do the plans show the specific location of the motorised elements of this devise. Therefore, as continual noise and vibrational impact could make the use of the relatively small garden of No 35 untenable, I have taken a precautionary approach. Consequently, without satisfactory evidence to demonstrate otherwise, I can only conclude that the mechanical air intake has the potential to have an unacceptable effect on the living conditions of the occupants on No. 35 in terms of noise and vibration.
12. That the noise impact assessment was submitted to the Council within a previous application is acknowledged. However, I can only draw conclusions on that which is submitted with the appeal. Equally a lack of comment from the Council's Environmental Health Department does not mean it supports the proposal.
13. It is also acknowledged that relevant technical information has been submitted to show the proposed roof top air exhaust and odour control of that exhaust is considered acceptable by the Council and there is nothing before me to conclude otherwise. Equally noise from the use of the extension could be limited by condition.

¹ Reference P-1184587865, dated 1 June 2022

14. Due to the single storey height, similar footprint to the existing extension, the proposed conservatory's position away from the boundaries of the outdoor space, and the built-up nature of the surrounding area, I am satisfied the proposal would not detrimentally impact the living conditions of occupants of the surrounding properties in terms of outlook, enclosure and access to daylight and sunlight. For these reasons I am also satisfied the proposal would not impact the privacy of the occupants of 39 and 41 Orford Road, or those properties which surround the rear of the appeal site along Eden Road and Orford Road. Nor would it impact the commercial viability of the ground floor uses of Nos. 39 and 41.
15. However, this does not overcome the harm identified in relation to the living conditions of the occupants of No 35, with regard to noise and vibrational disturbance. Consequently, the proposal would fail to comply with Policy 57 of the London Borough of Waltham Forest Local Plan Part 1, adopted 2004 insofar as it seeks to protect neighbours from the potential harmful impacts of new development.

Other Matters

16. The appeal site is within the Orford Road Conservation Area (CA), and I am required by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving or enhancing the character or appearance of conservation areas.
17. The CA's significance lies within Orford Road being a good example of traditional Victorian 'village' centre planning. It is dominated by Victorian era buildings used for a mix of commercial, retail, and community purposes. The rear elevations of the buildings, including that of the appeal site, are largely screened from public view and have been significantly altered due to their various use and reuse over time. Accordingly, I am satisfied the replacement of the existing rear extension would not harm the character and appearance of the CA.
18. It has also been identified that the proposal would not harm highway safety, trees, biodiversity, and waste management. However, a lack of harm is by definition neutral, so cannot outweigh the harm identified in the main issue.
19. Interested parties raised concerns in relations to the proposed fire exit and potential lack of storage. As I am dismissing the appeal for other reasons, I how not pursued these matters further. That the appeal site included multiple title deeds and the applicant has submitted multiple applications, is noted but are procedurally acceptable actions within the planning system.

Conclusion

20. For the reasons given above the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the National Planning Policy Framework, which would indicate a decision otherwise. The appeal is, therefore, dismissed and planning permission refused.

RJ Redford

INSPECTOR