



Appeal Decision

Site visit made on 12 November 2024

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2024

Appeal Ref: APP/U5930/W/24/3345391

Land Rear of 65-79 Roberts Road, London E17 4LP

- 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 Mr Gradica of Gradica Properties Ltd against the decision of Waltham Forest London Borough Council.
 - The application Ref is 231470.
 - The development proposed is demolition of existing garages and construction of two 2-storey dwelling houses (1 x 3 bedroom and 1 x 2 bedroom) (Use Class C3) together with associated hard and soft landscaping, access gate, bicycle parking, refuse and recycling storage facilities and associated heat pumps.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development provided on the planning application form has been replaced by an amended version on the decision notice and in subsequent appeal documents. I consider that subsequent description to accurately represent the proposal and I have therefore used it within this decision.
3. Subsequent to reaching its decision, the Council adopted the Waltham Forest Local Plan LP1 2024 (The Local Plan). This supersedes some of the development plan documents referred to in the reasons for refusal, and the appellant has had the opportunity to comment on this. I have proceeded to determine this appeal on the basis of the adopted development plan.

Main Issues

4. The main issues are:
 - The living conditions of future residents with regards to access and security;
 - The living conditions of nearby residents with regards to outlook and light;
 - Planning obligations and agreements;
 - Waste collection;
 - The character and appearance of the area; and
 - Outline Construction Logistics Plan.

Reasons

Living Conditions – Future Residents

5. Access to the 2 dwellings would be via a narrow path between a 2-storey wall and a high boundary wall that leads from a communal circulation area. Due to the narrow enclosed nature of the path and the minimal degree of overlooking, this would be an intimidating and oppressive route for access to the dwellings. Even though the width of the path increases, it would not represent a safe or secure access for residents as it would create a relatively hidden area.
6. The access lane and communal open area within the appeal site would be overlooked by surrounding properties, including Hyh House. However, most of the views from habitable rooms are from a distance and the neighbouring properties are functionally separate from the circulation areas within the appeal site, which would limit their control over antisocial behaviour on the site. Moreover, surrounding properties would provide minimal, if any, surveillance of the path leading to the dwellings. In this context, I am mindful of the history of antisocial activity at the site. The limited nature and effect of the surveillance from neighbouring properties does not therefore negate the harm I have identified.
7. The access lane would be gated, which would provide a degree of security. But given that the lane provides access to an adjacent property, it has not been demonstrated how secure this would be in preventing unauthorised access to the site. The appellant also refers to proposed lighting, but I do not consider that this would mitigate the safety and security concerns given the constrained and hidden nature of the pedestrian access to the dwellings. As indicated by the Council, the development should not be designed to rely on security measures such as lighting and entry control systems in order to ensure safe and secure living conditions; it should also have a layout that enables natural surveillance and avoid relatively hidden corners and areas.
8. In conclusion on this issue, the poorly designed layout and access routes within the site would lead to significant harm to the living conditions of future residents in respect of the degree of safety and security that residents could reasonably expect. The proposal would therefore be contrary to Policies 53 and 58 of the Local Plan with regards to providing a safe environment and designing out crime.

Living Conditions – Nearby Residents

9. In respect of light, the appellant has submitted a Daylight and Sunlight Report (DASR) which concludes that all neighbouring properties meet the target values in the BRE Guidelines for daylight & sunlight with the proposal in place. It also concludes that neighbouring rear gardens and active amenity spaces either meet the BRE target value or come very close to doing so.
10. However, there is a narrow extent of space between a block of Hyh House which would only retain two hours of sunlight on March 21st to 41% of its area. The DASR sets out that this area has no doors opening onto it and no plants or flowerbeds, and considers it to be defensible space and not an amenity space. On that basis, the DASR concludes that the retained level of sunlight to this area is considered acceptable.

11. Nevertheless, the plans for Hyh House and my own observations indicate that access to this narrow area is provided from communal stair wells. This indicates that residents have access to this strip of land and that it may therefore represent an amenity area for their benefit, even allowing for its current constrained nature. Based on the evidence of the DASR, this area would not retain an acceptable level of sunlight, with commensurate harm to the living conditions of residents. An extent of the boundary wall would also be increased in height adjacent to this amenity space, which would lead to an overbearing impact exacerbating the harm arising from loss of light.
12. The Council also refers to the separation distance from the habitable rooms of neighbouring properties, particularly the flats in Hyh House and Highcroft Point. The layout of the proposal has been designed so that the massing of the dwellings are primarily faced onto by windows serving kitchens, bathrooms and communal stairways of the nearby flats. The Council considers that the kitchens are habitable rooms. But the appellant has submitted floor plans of the flats and specifies that the kitchens fall below the Council's area threshold to be considered as habitable rooms, and the Council has provided no substantive evidence to the contrary.
13. Bedroom windows in Highcroft Point would face onto 1 of the dwellings. However, the upper floor of the dwelling would be set back from the boundary, which would reduce its visual impact. The upper floor would be marginally closer than the 10m separation distance referred to by the Council, but this would be to a limited degree and given the nature of occupation of bedrooms I do not consider that this would be sufficient to warrant the refusal of planning permission.
14. The Council refers to separation distances in the Urban Design SPD 2010. However, these relate to distances between the habitable rooms of dwellings, and the proposal has been laid out so that the windows of habitable rooms do not look directly onto those of existing nearby dwellings.
15. Based on the evidence before me, the proposal would not lead to material harm regarding the separation distances between dwellings. However, I have identified significant harm in relation to loss of light and outlook on an external amenity area serving Hyh House, and the proposal would therefore be contrary to the amenity requirements of Policy 57 of the Local Plan.

Planning Obligations and Agreements

16. The Council refers to contributions and obligations in respect of car free development, sustainable modes of transport, Construction Logistics Plan monitoring, Epping Forest SAMMs and S106 monitoring fees. Based on the evidence before me, these requirements comply with the tests of paragraph 57 of the National Planning Policy Framework (the Framework). The appellant has submitted a separate Agreement and Unilateral Undertaking (UU) which purport to address these matters. These documents have been sent to the Council for comment, although it has not responded.
17. However, there are issues with the submitted Agreement and UU, including that neither of them are dated, and the lack of the Council's signature and mortgagee details on the Agreement. These documents are therefore incomplete and there is no mechanism before me to ensure that the Council's reasonable requirements on these matters are met.

18. The appellant also contends that a S278 highway contribution is not required as the existing crossover can remain to enhance emergency vehicle access and that vehicle access to the site will be restricted by a barrier. In this respect I am also mindful that the proposal could lead to a reduction in vehicle movements compared to the existing use.
19. However, I saw that the vehicle crossover at the site is not of a suitable design for the safe and convenient movement of vehicles across the footway. The appeal proposal would include vehicular access to an existing garage, and access will also be required during construction. Even allowing for a longer term reduction in vehicle movements compared to the permitted use, it would not be appropriate to rely on the existing inadequate vehicle crossover. The Council's requirement for a S278 conditions survey for relevant highway improvement works therefore meets the tests set out in paragraph 57 of the Framework. The appellants failure to provide for this represents a reason to dismiss the appeal.
20. The Council refers to the lack of a financial contribution to off-set any failing to achieve 35% carbon reduction on site. However, the scheme includes heat pumps and solar panels, and the Council has not provided substantive evidence to contradict the appellants Energy and Sustainability Statement. In any event, as is set out in the Council's Delegated Report, this matter could be addressed by condition.
21. Notwithstanding my conclusions in respect of a carbon off-set contribution, I conclude that a suitable mechanism has not been provided to achieve the Councils reasonable requirements in respect of planning obligations and agreements. The proposal would therefore be contrary to Policies 3, 65, 66, 81 and 94 in respect of the matters to be addressed by the contributions and obligations.

Waste Collection

22. The development would be accessed by the existing narrow lane. Although the proposed development is car-free, the access would continue to provide vehicular access to a neighbouring garage.
23. There is a waste storage area within the appeal site which would appear to make suitable provision for the proposed development. However, on collection days the bins would need to be presented close to the highway, and the submitted details do not show how this could be achieved without hindering vehicular movement along the access lane or conflicting with pedestrian and vehicle movements on the public highway.
24. The appellant considers that this could be addressed by condition. However, given the constraints of the access lane and the relationship with the public highway there is no certainty that a planning condition would enable this matter to be successfully addressed.
25. I conclude that the proposal would not make suitable provision for the collection of waste, and that it would therefore conflict with Policy 93 of the Local Plan in respect of waste management.
26. The Council refers to its Waste and Recycling Guidance for Developers 2023, but I have not been provided with a copy of this and have therefore not had regard to it.

27. Although a previous Appeal Decision¹ for 3 houses on the appeal site considered waste storage, this was in relation to the amenity of neighbouring residents primarily in respect of noise and smell, rather than the effect on vehicle or pedestrian movements. The conclusions of the previous Inspector do not therefore lead me to a different conclusion in respect of the harm I have identified.

Character and Appearance

28. The appeal proposal relates to a self-contained backland site. It is located between the traditional residential terraces on Roberts Road and the flatted developments of Hyh House and Highcroft Point. Policy 8 of the Local Plan sets out approaches for character-led intensification of housing development; although the varied forms of development in this area means that it does not have a robust character, and is therefore more suitable for transition or transformation forms of development within the terms of that policy.
29. Due to its self-contained nature and the varying styles of development in the immediate area of the site, the site presents an opportunity for a relatively bespoke form of development. The Council refers to the existing urban grain and character in this area, but given the varied forms of development these factors are not readily apparent in the context of the appeal site. Although the appeal proposal is of an understated nature, it is of an attractive modern design and would clearly be subservient to the adjacent forms of development. It would also represent a significant improvement compared to the existing buildings and use on the site.
30. The Council refer to various criteria, including those of Policy 53 of the Local Plan. The site would not be readily visible from the public realm, and the issue of the legibility of the access to the dwellings is more properly considered in respect of living conditions rather than character and appearance. The lack of an active street frontage is inherent in the development of backland sites such as this. The extent of hardstanding within the site is functionally related to the provision of access to an adjacent garage, and concerns about the appearance of this area could be addressed by a landscaping condition. Viewed objectively and in context, the design of the proposal is a suitable response given the backland location and constraints of the development site.
31. Given the form of the development site and its immediate context, I conclude that the appeal proposal would not harm the character and appearance of the area. The proposal would therefore not be contrary to the design requirements of Policies D1 and D4 of the London Plan; and Policies 8, 19, and 53 of the Local Plan.

Outline Construction Logistics Plan

32. The Council considers that the Outline Construction Logistics Plan provided by the appellant is not acceptable, in that it fails to adequately demonstrate how the proposed development could be built or serviced without impacting or affecting the surrounding public highway and its network during construction. However, the Council has provided no substantive evidence to support its concerns or explain why these cannot be addressed by condition.

¹ Appeal Ref: APP/U5930/W/19/3237956

33. Based on the evidence before me, the Outline Construction Logistics Plan submitted by the appellant provides suitable details to address the impacts of the development, and any outstanding matters could be addressed by conditions. On that basis, the proposal would not conflict with the transport and logistics requirements of Policy T7 of the London Plan; and Policies 63, 64 and 65 of the Local Plan.

Other Matters

34. In its Statement of Case, the Council refers to an Air Quality Assessment Plan which should have been identified as a validation requirement, although it has also indicated that this matter could be addressed by planning condition. However, given that I have dismissed this appeal for other reasons then I have not considered this matter further.
35. I am mindful that the proposal would bring an unsightly brownfield site into a productive use and would contribute to the supply and mix of housing in the area. However, it has not been demonstrated that similar benefits cannot be provided by a more suitable form of development. On that basis, and given the scale of the proposal, these benefits therefore carry only limited weight in favour of the appeal. That is the case even allowing for the Council's failure to meet its housing delivery targets as set out in its Authority Monitoring Report 2022/23.

Conclusion

36. Notwithstanding my conclusions in respect of character and appearance as well as construction logistics, the proposal would conflict with the development plan when read as a whole in respect of the living conditions of future and existing residents, planning obligations and agreements, and waste collection.
37. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

David Cross

INSPECTOR