



Appeal Decision

Site visit made on 4 November 2024

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date:

Appeal Ref: APP/E5900/W/24/3342558

Coutts Court, 75 Wallwood Street, Tower Hamlets, London E14 7GS

- 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 Reich, Avon Group Ltd, against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref is PA/23/00132.
 - The development proposed is a roof extension on top of existing residential building to create two storeys to accommodate 5 residential units along with cycle infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the 12 December 2024, the Government published a revised version of the National Planning Policy Framework (the Framework). I have considered its amendments against the December 2023 version and against the parties' appeal evidence. I have also updated Framework paragraph numbers where necessary. The Government also published a Written Ministerial Statement (WMS) entitled 'Building the homes we need' on 30 July 2024. Having reviewed the changes, I am satisfied that they do not affect the substantive matters of the appeal and that proceeding without further consultation with the main parties would not be prejudicial to their respective cases.
3. As part of the appellant's appeal documentation an updated daylight and sunlight assessment (Whatman House, October 2023) has been submitted. The Council has commented on this document in its statement. It appears to me that no other parties would be prejudiced by my consideration of this document, and I have taken it and the comments made into account in my decision. On the basis of this updated document the Council is satisfied that its concerns in respect of loss of light and overshadowing to the rooftop garden have been addressed. It has therefore not been necessary to consider this matter further in my decision.
4. A revised floorplan (unreferenced) has been submitted with the appellant's Final Comments which is intended to show a revised bin layout. It is unclear to me whether the Council has seen this revised plan and I have no assurance that the Council's Waste Management Team have been able to comment on this revision. Accepting this plan at this stage of the appeal appears to seek to evolve the scheme and may therefore prejudice the Council or other parties from being able to consider it properly. Consequently, I have not taken account of this revised plan in reaching my decision.

Main Issues

5. The main issues are:

- The effect of the proposal on the living conditions of existing occupants with particular reference to privacy;
- Whether or not the proposal would provide acceptable living conditions for existing and future occupants with regard to waste management and communal amenity space; and
- Whether or not the proposal would make acceptable provision for affordable housing.

Reasons

6. The appeal site comprises a part four, part six storey block of flats, located on the west side of Wallwood Street. There are a number of similarly sized buildings in the locality and to the west lies an existing communal park and children's play area. The proposal seeks to install a two storey upward extension of the existing six storey part of the building to provide five new units.

Privacy of existing occupants

7. The scheme would provide an external cycle store, positioned alongside two existing ground floor flats and close to several habitable windows. The site is also near to a communal park and play area. I saw on site that due to the site boundary and fencing around the flats that the available area for the store is very constrained.
8. Much of the perimeter of the ground floor of the building, especially near windows serving habitable rooms, is tightly enclosed by railings, supplemented by hedging and additional fencing. This indicates to me that perceived overlooking from those using the communal park and a sense of security is a concern to residents in this area. The information would appear to show that the installation of the cycle store would require the removal of some of the hedges and vegetation which currently provides screening and privacy to those occupants.
9. The appellant has suggested that a condition could be attached to any approval to agree the details of the cycle store to protect the privacy of residential occupants and maintain their feeling of security. This could ensure that the store was not transparent, that the doors would face away from windows and provide additional planting to either side to replace any lost vegetation. However, given the close proximity to the nearby windows, based on the relatively limited information before me regarding its appearance and location, and the constrained outdoor space, I am not satisfied that an acceptable solution would be achieved. Even if the occupants of those dwellings could not see the users of the store, they would have an acute awareness of the activity, noise and disturbance very close to them, especially late at night. It would therefore threaten the sense of privacy that those residents currently enjoy.
10. Whilst the Council's Highways Officers endorsed the cycling provision, planning officers have an additional responsibility to consider the living conditions of

nearby residents. I have also considered whether dedicated internal cycle storage and the provision of folding bikes would be an adequate alternative, and I see evidence that these have been allowed elsewhere. However, even taking account of the good public transport provision, the policy requirement is clear, and I have few details to assure me that there would be adequate alternative provision. I also see no appropriate mechanism for ensuring that foldable bikes would be available for the lifetime of the development. Nor has it been adequately explained whether they would have to be taken up to each flat for storage or be kept elsewhere. It is also likely that they would not be suitable for occupants with mobility difficulties.

11. Therefore, in the absence of adequate clarification on the precise details of the proposed external store and its surrounding context, it appears to me that this proposal would not be acceptable even if further details were submitted by condition. I must, therefore, err on the side of caution and consider that the close proximity of the cycle storage to habitable rooms and the potential loss of screening would have a detrimental effect on the existing occupants' sense of privacy.
12. The London Local Plan Policy T5(E) (2021) (LLP) refers to Councils working with developers to secure suitable solutions to provide adequate cycle parking where this is not able to be provided within a development. However, I see no reason why this approach would be followed at this stage given the appellant's view that the proposed provision would be adequate.
13. It has not therefore been demonstrated that the proposal would not have a harmful effect on the living conditions of existing occupants with particular reference to privacy. As such it would be contrary to Policy D.DH8 of The Tower Hamlets Local Plan (2020) (THLP), LLP Policy D3 and the requirements of the Framework which seek to ensure that occupants enjoy a good level of amenity.

Waste management and amenity space

14. THLP Policy D.MW3 outlines that all new development must include accessible space to separate and store waste for collection, both within individual units and for the building as a whole. The appeal proposal indicates that waste would be stored in the existing two rooms which are accessed from Wallwood Street. The Council's Environmental Services Officer comments that the bin store is not large enough for the additional capacity and that it would not be possible to store the bins in the correct manner for collection. It is also considered that there would be insufficient accessible space for occupants of the building as a whole to separate and store their waste.
15. Based on the submitted drawings, the bin stores would become cramped because of the increased waste provision. Drawing 748-PL-01-101 shows several large bins enclosed by surrounding bins with limited manoeuvring room. This is likely to pose a difficulty in the safe and efficient collection of waste, and for effective waste management by residents. It therefore has not been adequately demonstrated that the proposed bin stores would provide sufficient, accessible space to allow functional usage and appropriate collection.
16. In some circumstances waste storage can be secured by a condition attached to an approval, and I have reviewed the evidence of other decisions where this

has been the case. Despite this, I would need to be satisfied in the first instance that adequate waste storage is likely to be achievable. In the case before me, I have insufficient detail to be satisfied that this would be possible on this site. I am also aware that in future there may be proposed changes to the way that waste will be collected, but I have been provided with few details and this is not a sufficient reason to depart from current policies and guidance.

17. THLP Policy D.H3 requires that for developments with 10 or more residential units, the minimum communal amenity space (excluding circulation areas, access routes and waste or bike storage) should be 50 sqm for the first 10 units plus a further one sqm for every additional unit thereafter. It goes on to state that for major development, a minimum of 10 sqm of high quality play space should be provided, using the child yield calculator to determine child numbers in a development. The appeal proposal would provide five residential units and does not include any increase in communal amenity space or child's play space. Despite only being five proposed units, the Council considers that it would incrementally increase the existing accommodation on the site. Therefore, if permitted, consider that it would add additional strain on existing facilities and therefore should be regarded as though it were a development of over 10 units. However, although the Council is treating the proposal as a major development, the policy is not clear as to whether it should apply to the appeal proposal on its own or to the cumulative size of the wider development on the site. In the absence of this clarification, it is a planning judgement for me based on the site and its context.
18. The evidence before me indicates that during the construction of Coutts Court and development nearby, adjoining land was extensively landscaped to provide pedestrian access, play areas and planting. I saw on site that there was a good degree of community space and play space near to the appeal site and larger areas of accessible open space nearby. The host building also provides a rooftop garden. There is little evidence before me to suggest that there is a lack of provision in the immediate area or that those facilities are over-stretched.
19. If I were to take the view that the proposed development is not major, then there would be no requirement to make provision for communal amenity space and play space. However, even if I were to agree with the Council's arguments, in the particular circumstances of this case where there appears adequate provision nearby, I am satisfied that this existing provision could accommodate the proposed increase in residential units. The proposal would, therefore, meet the intention of this policy.
20. I therefore conclude that whilst I have found that the proposal would be served by an adequate amount of amenity space, complying with the relevant policies in this regard, it would not provide acceptable living conditions for existing and future occupants with regard to waste management. It would therefore conflict with THLP Policy D.MW3 which seeks to protect the amenity of new and existing occupants. It would also conflict with the Framework which seeks to ensure that occupants enjoy a good level of amenity.

Affordable housing

21. The appellant has prepared a signed Section 106 Agreement to secure a small sites affordable housing financial contribution to the Council. Although I have

seen some correspondence between the parties on this matter, the Council does not appear to have provided comments on this signed agreement.

22. I have reviewed the Section 106 Agreement and see that the Council has not raised any objection to the amount of money that the appellant has offered, which is based on the Council's small sites calculator. I consider that the measures in the Undertaking are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework.
23. However, I have some concerns about the document itself, its execution and thus whether the Council could rely on it to secure the contributions. For example, there are no adequate Land Registry details to assure me that all persons with an interest in this land, including any mortgage interests, are party to this agreement.
24. As I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the main parties. Nonetheless, as it stands, and for the reason given, it has not been suitably demonstrated that the submitted Unilateral Undertaking would make adequate provision for an affordable housing contribution in accordance with THLP Policy S.H1, D.H2 and the Framework which seek to meet identified housing need.

Other Matters

25. I have had regard to other issues raised by interested parties, including noise from construction, over-development, overlooking, parking stress and highway safety. However, I note that the Council has not raised objection on these issues and as I am dismissing the appeal on other grounds it has not been necessary to consider these matters further.

Planning Balance

26. The development would provide five additional dwellings on the site which would add to the overall stock and choice of dwellings and support the supply of homes. A boost to housing supply is an important Framework consideration in favour of the development, which is emphasised more strongly in the revised version of the Framework and the WMS. In addition, Paragraph 73 of the Framework mentions that small sites can make an important contribution to meeting housing requirements, and supports the development of windfall sites, giving great weight to the benefits of using suitable sites within existing settlements for homes. Paragraph 124 also supports the effective use of land. Furthermore, the development would also support the vitality of the community, including supporting local services and facilities, and would provide some construction jobs. Future occupants would also help sustain local businesses. However, given the size of the development proposed, these public benefits would be modest, and I attribute them limited weight.
27. I have also had regard to the intention to provide an affordable housing contribution but as I have concerns regarding the drafting of this document, and whether it would be effective in allowing the Council to secure the contributions, I can only attach limited weight to it at this stage.

28. However, for the above reasons, I conclude that the proposal would have a significantly harmful effect on the living conditions of existing occupants due to a loss of privacy, and to existing and future occupants due to inadequate waste storage. I am also not satisfied that an affordable housing contribution could be secured. Cumulatively, these are matters that weigh heavily against the scheme.
29. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Overall, the cumulative benefits of the proposed development, which include the matters I have highlighted above, are clearly worthwhile but nevertheless overall carry limited weight in favour of the scheme. However, these benefits would not be of sufficient magnitude to outweigh the harm and related policy conflicts that I have identified. That harm would be very significant and permanent and such that the scheme would not be in accordance with the development plan when considered as a whole.

Conclusion

30. For the above reasons, and having taken all other matters raised into account, there are no material considerations that indicate that the proposal should not be determined otherwise than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

G Bayliss

INSPECTOR