
Appeal Decision

Site visit made on 5 December 2024

by **A M Nilsson BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18th of February 2025

Appeal Ref: APP/U5930/W/24/3350354

Lea Park Trading Estate, Unit 12, Warley Close, Leyton E10 7LF

- 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 Marc Rowan against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref is 240419.
 - The development proposed is extension at roof level to an existing single-storey warehouse and conversion to a mixed-use live/work unit.
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Decision

1. The appeal is dismissed.

Application for costs

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

Preliminary Matter

3. On 12 December 2024 the Government published a revised National Planning Policy Framework (the Framework). The revised Framework was accompanied by a written ministerial statement (WMS). Having regard to the main issues in this appeal, it has not been necessary to invite submissions from the parties on the revisions that have been made to the Framework.

Main Issues

4. The main issues are 1) whether or not the proposed development results in the loss of employment floorspace, 2) the effect of the proposed development on the character and appearance of the area, 3) whether or not satisfactory provision would be made for refuse management, 4) the effect on highways safety in terms of pedestrian access and the construction phase of the development, and 5) the effect on the integrity of the Epping Forest Special Area of Conservation, with particular regard to any mitigation measures required.

Reasons

Employment Land

5. The appeal site comprises a single storey industrial unit. It is located on Lea Park Trading Estate which is a mix of commercial and small-scale industrial uses centred around Warley Close, sitting between Millicent Road and Church Road.

Access is taken from between existing residential properties on Millicent Road. The estate is not a designated employment or industrial area and therefore constitutes non-designated employment land.

6. In addition to the commercial and light industrial uses at the estate, four of the 14 units have been granted planning permission to be used as live/work units. The evidence outlines that the existing unit comprises 77 sqm of commercial floorspace which was last used as a storage facility.
7. In the appeal development, there would not be a loss in the amount of commercial floorspace. The appellant outlines how the amount of commercial floorspace would actually increase as a result of the proposal and that the residential element of the unit does not use any of the existing floorspace.
8. Policy E7 of the London Plan (2021) outlines the situations where mixed use or residential development proposals on non-designated industrial sites may be supported. One such example is where industrial, storage or distribution floorspace is provided as part of mixed-use intensification. The policy then refers to Policy E2 which sets out that such proposals should, amongst other things, ensure that an equivalent amount of B Use Class business space is re-provided in the proposal which is appropriate in terms of type, use and size.
9. Policy 28 of the Waltham Forest Local Plan (2024) requires a similar approach to be made to non-designated employment land. It outlines, amongst other things, that development which seeks to introduce residential or mixed-use elements to non-designated employment locations will only be supported where, amongst other things, it uses the Agent of Change principle to mitigate design and sensitivity impacts and it provides replacement or intensified employment floorspace, with the quantum of any existing industrial, storage, or distribution floorspace being - as a minimum - fully re-provided as an industrial use.
10. The Council's case however focuses on the other elements of the policies which relate to there being no reasonable prospect of the site being used for industrial and related purposes. In the London Plan, such a demonstration of 'no reasonable prospect' outlines the evidence that is necessary to demonstrate such a case. The local plan policy makes a similar provision.
11. The Council do not appear, however, to have acknowledged that the scenarios where the support will be given for the introduction of mixed use or residential developments in non-designated employment areas are 'or' and not 'and' (except limb A of Policy 28).
12. In this case, there is no overall loss of employment floorspace, given that it is part of the proposed development. The development therefore satisfies one of the scenarios outlined in the policies as outlined above. Had I allowed the appeal, it would have been necessary to impose a planning condition requiring that the amount of floorspace shown on the submitted plans as employment (comprising industrial, storage or distribution) is retained as such at all times.
13. The Council's reason for refusal specifies that there has been a failure to demonstrate a clear need for a residential presence, however this is not required to be established under Policy 28 of the local plan or Policy E7 of the London Plan. The Officer Report refers to the failure to demonstrate that there is no reasonable prospect of the site being used for industrial and related purposes, however given

the reprovision of employment floorspace in the development, this is not required to be addressed.

14. I acknowledge that the supporting text to the policy outlines that in order to prevent the loss of well performing employment floorspace to residential uses, new developments will be expected to provide sufficient evidence to demonstrate 'no reasonable prospect' of the site being used for employment uses. The supporting text is not however adopted policy. Furthermore, the proposed development does not result in the loss of well performing employment space, and there is an increase in employment floorspace.
15. Having regard to the necessity to consider the 'agent of change' principle, this is not a matter in dispute. Given the make-up of the industrial estate, its close association with existing residential uses and the presence of existing live-work units at the estate, I have no reason to form a different view.
16. The Council have referred to a planning appeal¹ for a live/work unit at the estate that was dismissed. Although I do not have full details of the case in order to give it significant weight, crucially, it pre-dates both the current local plan and the London Plan. I have determined this appeal in accordance with the current development plans as is required.
17. Therefore, having regard to the scenarios where such uses will be supported, the proposed development does not result in the loss of employment floorspace. It therefore complies with the requirements of Policy 28 of the local plan, and Policy E7 of the London Plan as outlined above.

Character and appearance

18. The appeal site is part of a small trading estate which has a typical industrial appearance, primarily comprising of single storey buildings with pitched roofs. It occupies a somewhat backland setting behind the commercial properties of Church Road and the residential properties and residential blocks on Lea Bridge Road, Millicent Road and Tallack Road. This setting means that the appeal site is not prominent from any of the key public vantage points in the immediate area.
19. Although most of the units have pitched roofs, the proposed building would have a flat roof design which is similar to the existing live/work unit at unit 2. The Council consider that the flat roof design responds well to the existing built form within the trading estate. Given the variation in the surrounding built environment, and the existing use of flat roofs within the trading estate, I have no reason to form a different view.
20. The proposed development would involve the addition of two floors to the premises. As the Council observe, although the increase in height is for two floors as opposed to one, it will not exceed the heights of units 8 and 9. Given the scale and height of the surrounding developments, again, I have no reason to form a different view.
21. The Council's main concern in relation to character and appearance, appears to stem from the lack of a setback at the first and second floor level on the principal elevation. Having regard to a similar approach to that advocated by the Council

¹ APP/U5930/W/19/3222198

being undertaken at units 8 and 9, I appreciate that such an approach can relieve the dominance of an otherwise continuous vertical projection.

22. The evidence shows, however, that there would be a partial setback of the first and second floors at the front elevation. This would contribute to relieve any dominance of the front elevation. Furthermore, given the seclusion of the appeal property, both within the trading estate and the wider area, the impact is minimal. The proposed architectural detailing at this point also adds a notable degree of variance to the elevation which also contributes to relieving any vertical continuity which would be otherwise perceived to be dominant.
23. For these reasons, I conclude that the proposed development would not harm the character and appearance of the area. It would comply with Policy 53 of the Waltham Forest Local Plan (2024) which requires that development proposals deliver high quality design and reinforce and/or enhance local character.

Refuse management

24. The submitted plans show that refuse would be stored internally within the commercial unit. Although the plans show two bins, the area could reasonably accommodate more if necessary. The Council have referred to the distance from the kerbside. This is commonly referred to as the 'drag distance'. I observed on my site visit, and the appellant has also highlighted, that there is a collection area adjacent to the gates to the estate. Either way, bins would be required to be moved to the kerbside or collection area on collection day. The drag distance would exceed the distance of 25 metres as outlined in the Council's Waste & Recycling Policy for Developers (2022). Although the status of the document for planning decisions is not provided, it is a material consideration.
25. Given that the appeal site constitutes an existing commercial use, which would be subject to some form of existing refuse storage and collection arrangement, this represents a material consideration of significant weight. I am not aware of any existing, or historic, problems associated with refuse storage and collection from the appeal site. Given that there would be an addition of one residential unit over and above the existing commercial floorspace, I do not find that this would somehow render the arrangements to be unacceptable.
26. The existing units, which also includes existing live-work units, would also be subject to an existing arrangement and there is no valid reason given why this could not apply to the appeal property. I acknowledge, as the Council highlight, that private waste collection for residential properties is generally not acceptable. However, in this case, it is clear that there is an intrinsic link with the commercial element of the property, that does not lead me to conclude that the arrangement would be unacceptable. I am also referred to the Council's waste policy which outlines that combined (commercial and domestic) waste can be permitted if dealt with through a commercial contract.
27. I have been referred to an appeal decision² where an Inspector gave weight to the statutory requirement to collect waste and recycling from domestic premises. I do not have the full details of that case in order to give it significant weight. Even if it were somehow practical to require separate collection of the domestic waste by

² APP/U5930/W/23/3316503

the Council, despite the drag distance, collection via the storage area adjacent to the site entrance would be permissible.

28. I therefore find that on the matter of refuse management and collection, there is nothing to suggest that the implications would cause harm in terms of land use planning matters. Had the appeal been allowed, appropriate waste collection arrangements could have been secured by an appropriately worded planning condition and/or a legal agreement if necessary.
29. I therefore consider that the proposed development would comply with Policy 57 of the Waltham Forest Local Plan (2024). This policy requires, amongst other things, that developments provide sufficient facilities for the storage, collection and disposal of refuse, considering the level and type of provision, its location, and any negative impacts it may have on visual amenity, access, health and security.

Highway safety

30. In terms of pedestrian access, the Council consider that it has not been demonstrated that this would be safe or welcoming.
31. In terms of the safety of pedestrians, there is not a dedicated footpath within the site. That said, vehicle movements appear to be relatively low and at very low speeds and the appeal proposal would present a similar environment and situation to the existing live-work units at the site. I therefore do not consider that the route would be unsafe in pedestrian safety terms.
32. I appreciate that the access route is different, and to a small extent less welcoming than a uniquely residential development. The appeal proposal however is different in its nature, that being a live-work unit within an existing non-designated employment area. It is almost inevitable that the nature of the environment, both in terms of its use and physical make-up would be fundamentally quite different to an exclusively residential development.
33. The appellant has identified aspects such as external lighting which could be used to improve the route, and had I allowed the appeal, such features could have been secured by planning condition to ensure improvements were made to the route.
34. The Council refused planning permission for, amongst other reasons, due to the impact on the public highway, in the absence of a satisfactory Outline Construction Logistic Plan.
35. The proposed development would bring a small number of vehicle movements during construction. The appellant has submitted an Outline Construction Logistic Plan³ (CLP) which sets out how these will be managed during the construction phase. Although the Council have stated that they do not consider it is acceptable in its current form and would require revisions, there is no explanation in the submitted evidence to state why this view is held and what revisions would be necessary.
36. Given the submitted plan and the size of the development, I do not consider that there would be a severe impact on the public highway during its construction. The plan sets out reasonable routes for construction traffic and manoeuvring which would necessitate the use of a banksman. Whilst some disruption is inevitable

³ Outline Construction Logistic Plan – Capital Transport Planning – February 2024

during construction, compliance with the submitted plan and through the imposition of appropriately worded planning conditions had I allowed the appeal, would ensure that there would not be a severe impact on the highway.

37. The proposed development would therefore comply with Policies 58 and 65 of the Waltham Forest Local Plan (2024). These policies seek to ensure that, amongst other things, developments are safe, and that the construction phase of developments does not have a significant adverse impact on the highway network.

The Epping Forest Special Area of Conservation

38. The evidence before me indicates that the site is located within the zone of influence (ZOI) for the Epping Forest Special Area of Conservation (SAC) which is a European designated site. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) requires the competent authority to ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of European designated sites. The effects arising from the proposed development need to be considered in combination with other developments in the area and by adopting a precautionary approach.
39. Policy 81 of the local plan outlines that the Council will protect and enhance the natural environment of the SAC and seek to ensure that development proposals contribute to the avoidance and mitigation of adverse recreational and urban effects on the SAC by ensuring, amongst other things, that residential development within the ZOI contributes to the delivery of i) The Strategic Access Management and Monitoring Strategy (SAMM); and ii. The provision of Suitable Alternative Natural Green Spaces (SANGs) via (in most cases) Community Infrastructure Levy (CIL) funding.
40. The evidence show that the SAC is vulnerable to disturbance from recreational pressures as a result of an increase in the local population. In relation to recreational disturbances, the proposed development is likely to result in localised effects for which mitigation measures are required (a financial contribution towards SAMM measures).
41. The Habitats Regulations require me to determine whether the development is likely to have a significant effect on the SAC, alone or in-combination with other plans or projects, applying a precautionary approach. Where it would be affected, consent can only be granted if there are no alternative solutions, there are imperative reasons of overriding public interest and suitable compensatory measures are provided.
42. The proposed development would result in a net increase of one residential unit within the zone of influence. Occupants of the unit would create additional recreational pressures on the SAC. Given the quantum of development, the amount of additional recreational visitors would be small and the likely effects on the SAC from the proposed development alone would not be very significant. However, in combination with other developments the proposal would likely have significant effects on the European protected site.
43. As such, the development would have an adverse effect on the integrity of the SAC, but regard can be had to whether these adverse effects can be mitigated. In this regard, the Regulations place a duty on the competent authority to undertake

an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.

44. The evidence outlines that for schemes comprising one or more units of residential accommodation, a new package of costed SAMM has been prepared by the City of London Conservators of Epping Forest. The SAMM requires a contribution of £627 per unit from all new residential schemes to mitigate the impacts. Natural England, the statutory consultee for such applications, have commented that contributions to SANG and SAMM schemes should be included as part of the mitigation. The required contribution is directly related to the development and is fairly and reasonably related in scale and kind to the development.
45. In this case, although a draft agreement has been submitted, there is not a completed legal agreement before me to secure the appropriate financial contributions to ensure that no harm is caused to the integrity of the protected site. In the absence of acceptable mitigation, I therefore conclude that the proposed development would cause harm to the integrity of the SAC.
46. Consequently, the proposed development conflicts with the requirements of the Habitats Regulations, which are described above, and Policy 81 of the local plan and chapter 15 of the Framework.

Other Matters

47. In addition to the mitigation requirements as set out above, the Council refused planning permission for the failure to secure car-free development, highway works, and contributions towards CLP monitoring and improving sustainable modes of transport.
48. Although the appellant has provided a draft agreement, there is not a completed legal agreement before me. Whilst the ability to ensure the development is car-free can, in certain circumstances, be secured by planning condition, the payment of monetary sums is generally not capable of being secured by condition.
49. As I have found that the failure to secure appropriate mitigation to ensure that no harm is caused to the integrity of the SAC, and this alone provides a reason to dismiss the appeal, the presence of a completed agreement in relation to the other matters could not, in any event, lead to a different decision. There is therefore no need for me to reach a finding on these matters.

Planning Balance and Conclusion

50. The Government's objective as set out in the Framework is to support sustainable housing growth. The proposed development would result in a slight increase in the Council's overall housing number and would be in an accessible location. It would bring commercial floorspace into use and it would also bring a small number of additional residents to the area. This would contribute to the local economy. I give these matters moderate weight in favour of the appeal.
51. However, although I have found that there would not be unacceptable harm in terms of the provision of employment floorspace, to the character and appearance of the area, or highway safety, the failure to provide the necessary mitigation measures means harm would be caused to the integrity of the SAC. This attracts significant adverse weight that outweighs the benefits associated with the proposed development. In addition, it is noteworthy that paragraph 193(a) of the Framework

states 'if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused'.

52. I conclude that the proposed development would therefore conflict with the development plan for the area when considered as a whole and there are no identified other considerations that outweigh this conflict.

53. For the reasons set out above, and having had regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR