



Appeal Decision

Site visit made on 18 February 2025

by **K Savage BA(Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th March 2025

Appeal Ref: APP/U5930/W/24/3349332

Garages Adjacent 9 Guildsway, Lyne Crescent, London E17 5HZ

- 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 Kastriot Rexha against the decision of Waltham Forest London Borough Council.
- The application reference is 232744.
- The development proposed is demolition of existing garages and construction of a two storey dwellinghouse (1x2-bed 3 person) (Use Class C3). Associated works to include one parking space, hard and soft landscaping, bicycle parking and refuse and recycling storage area.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. On 12 December 2024, an updated National Planning Policy Framework (the Framework) was published, replacing the version from December 2023. I have had regard to this as an important material consideration.

Main Issues

3. The main issues are:
 - Whether the proposal would provide a suitable standard of accommodation, with regard to the size and quality of private external space;
 - Whether the proposal would make adequate provision for parking;
 - The effect of the proposal on the character and appearance of the area;
 - Whether, if necessary, the proposal would make adequate provision for local infrastructure, and;
 - The effect on designated nature conservation sites.

Reasons

Standard of Accommodation

4. The dwelling is proposed as a two bedroom, three person unit which would accord with the internal space standards required under Policy 56 of the Waltham Forest Local Plan Part 1 (February 2024) (the LPP1). The policy further requires that new homes should provide a minimum of 50sqm of external amenity space, which excludes footpaths, driveways and areas for vehicle circulation and parking.
5. The rear garden area is stated on the plans to be 53.5sqm, but this includes a proposed parking space of some 12sqm. Excluding this area, the garden would

amount to some 41.5sqm, a shortfall of some 17% against the policy requirement. Moreover, this space would be arranged as a narrow L-shape wrapping around the dwelling, with the parking space located directly behind a shallow front patio and adjacent to the sole area of lawn. The area to the side would be enclosed by the tall, side boundary wall/gate and would form a confined area more suited to access than active use as it would also form a route from the front of the property to the side door to the kitchen. Consequently, the proposed layout would represent a shortfall in both the quantity and quality of external space and would not provide prospective occupants with a suitable standard of accommodation.

6. The appellant points as mitigation for this shortfall to the internal space exceeding the relevant minimum floorspace requirements by some 15.6sqm, to neighbouring dwellings having smaller garden areas, and to the presence of areas of public open space nearby. The Council conversely points to the potential for the large main bedroom to be sub-divided to accommodate more residents than proposed.
7. The additional internal space is beneficial, and in terms of the number of occupants, I am assessing the proposal as submitted. However, much of this additional space is given over to the large bedroom, and the communal living space would be contained within a single room on the ground floor that would just meet the minimum floorspace requirement for a combined living/dining/kitchen space. As such, the overall internal space would not provide a demonstrably higher quality living space that would offset the shortcomings of the external space.
8. Moreover, although the proximity of public open space is advantageous, it is not private space and would not provide an equivalent degree of utility for residents. With respect to neighbouring dwellings, I am not provided with precise details of garden sizes, but even if other properties have smaller gardens, the policy seeks to improve the quality of external space for occupants and sub-standard gardens elsewhere do not justify a departure from the requirements of the development plan. My considerations in these respects are consistent with those of the Inspector in an appeal decision at the same site in October 2023.¹
9. The appellant refers to a development at 72 Millfield Avenue, but the details put to me do not explain the circumstances of that application or the Council's considerations in granting permission. It is unclear whether this situation is comparable to the appeal before me, and therefore attracts limited weight in my own assessment.
10. I am aware that a subsequent planning permission has been granted by the Council in July 2024, under its reference 240393, wherein the parking space has been removed and a larger usable garden space provided. This is a fall-back position for the appellant, but one which is demonstrably preferable in terms of the provision of external amenity space. Therefore, it is not a factor weighing in favour of the appeal as it does not present the proposed scheme as the less harmful option by comparison.
11. For these reasons, I conclude that the proposal would fail to provide satisfactory external amenity space and would therefore undermine the living conditions of future occupants, contrary to the aims of Policy 56 of the LPP1 to provide well designed, appropriately located and usable external amenity space in new developments.

¹ Appeal Ref: APP/U5930/W/23/3315763, dismissed 3 October 2023

Parking Provision

12. The proposal would provide one off-street parking space. The site is located within a controlled parking zone (CPZ) where residents must obtain parking permits. Policy 66 of the LPP1 requires all new residential developments to be car-free. This is a stricter approach than the now superseded Policy DM16 of the Development Management Policies Local Plan (October 2013) (the DMP), against which the Council assessed the application, which 'encouraged' car-free development. The Council's position is that to be car-free, no off-street parking should be provided and a legal agreement is required to prevent occupants from obtaining parking permits. The appellant has not provided a legal agreement to this effect.
13. This matter was considered under the aforementioned appeal in 2023, wherein the Inspector concluded that a legal agreement to restrict future occupants from applying for parking permits was not necessary to make the proposal acceptable in planning terms, due to the site having a PTAL level of 2 meaning low accessibility to public transport. The Inspector also noted that one off-street parking space would represent a reduction in the three spaces stated to exist at present, and that the small scale of the property would be unlikely to have any significant effect on parking pressure in the area.
14. I saw the surrounding area to be heavily parked but with some space available, though I accept this was but a snapshot and demand will increase in evenings and at weekends when people are more likely to be at home. Nonetheless, I agree with the previous Inspector that the demand arising from the development is likely to be low, and there is no substantive evidence before me that parking stress within the CPZ is at unsustainable levels, or that the issuing of a new residents' parking permit to a prospective owner would tip parking stress past a saturation point. Moreover, the reduction in the overall number of off-street spaces would be a minor improvement relative to the current situation, and would enable the provision of some on-street spaces as mitigation where redundant crossovers are removed.
15. Therefore, I find that the evidence does not demonstrate that the proposal would lead to a harmful increase in parking stress in the area, and I concur with the previous Inspector that a legal agreement restricting occupants from obtaining residents parking permits is not necessary to make the development acceptable in planning terms. Consequently, whilst there would be technical conflict with Policy 66, the specific circumstances of this case are such that the absence of a legal agreement to secure the development as 'car-free' does not weigh against the proposal in the planning balance.

Character and Appearance

16. The Council's specific concern is the proposed retention and extension of a 2.5m high boundary wall and 2.4m high metal gate to the side of the property fronting onto Guildsway. The Urban Design Supplementary Planning Document (2010) generally resists high boundary treatments to allow for an active streetscape.
17. The wall at the appeal site presently extends partially along the side boundary and around to the front of the property. The wall at the front would be demolished to a point in line with the front elevation of the proposed dwelling, with a short section next to the metal gates retained and the wall then extended rearward to a point in line with the proposed rear elevation, beyond which would be the retained sliding metal gate. A 1.2 metre metal railing is proposed to the front boundary.

18. The existing boundary presents an imposing, blank façade to the street, an effect compounded by the tall, wide and solid black metal gates continuing along the side elevation and returning along the rear boundary. However, tall boundary treatments are a feature of the properties at each corner of the junction. There is a similar tall, rendered wall diagonally across at 14 Shaw Square, and a brick wall with fence above at 1a Shaw Square. 1 Lyne Crescent has a timber fence to its side elevation on Guildsway, but retains an open corner and low front wall.
19. In this context, the retention of a tall wall would not appear wholly anomalous. Moreover, the presence of a taller wall to the side elevation would be consistent with the privacy function of the boundary treatments to the other corner properties. There would also be an enhancement in the removal of the wall to the front, creating a more open site consistent with that opposite at 1 Lyne Crescent.
20. I am conscious that the scheme approved under planning permission Ref 240393 proposed a 1.8 metre timber fence instead of the side wall and fence. This would reflect the material used on two of the corner properties, and its lower height would be less imposing than the wall proposed under this scheme. Nonetheless, the combination of the removal of the high boundary at the front, its replacement with a lower, open metal railing and the reduction in the expanse of the metal gates to the rear would still be a marked improvement over the existing appearance.
21. Moreover, the Council has not opposed the design of the dwelling itself, which would align with the scale and front building line of dwellings on Lyne Crescent, and would maintain a setback from the highway on the Guildsway side, consistent with the dwellings behind the site. When considered as a whole, the development would significantly improve the detracting, defensive appearance of the site and would make a positive contribution to the surrounding townscape.
22. Thus, I conclude that the proposal would preserve the character and appearance of the area and accord with the aims of Policies 5 and 53 of the LPP1 to make effective use of previously developed land, promote good design and high quality placemaking that reinforces and/or enhances local character and distinctiveness.

Local Infrastructure

23. The Council has set out a number of contributions considered necessary to make the development acceptable in planning terms. This includes financial contributions towards sustainable transport, carbon reduction, monitoring of a construction logistics plan, monitoring of the agreement itself and legal fees. The Council also seeks provisions relating to Section 278 off-site highway works. The Council's requirement for the proposal to be car and permit-free has been addressed above.
24. The evidence before me indicates that the off-site highway works would be required to ensure current highway standards are met. Construction monitoring is required under Policy 65 of the LPP1 to minimise impacts on the local transport network, whilst contributions towards sustainable transport modes are required under Policy T4 of the London Plan (March 2021). The contribution for carbon offsetting would take effect where the required 35% reduction in carbon dioxide emissions beyond the Building Regulations is not achieved through the construction process. This is necessary to accord with the requirements of Policy 85 of the LPP1 and the Planning Obligations Supplementary Planning Document (May 2017) (the SPD). The SPD also sets out requirements for monitoring of the agreement and payment of the Council's legal fees.

25. On the evidence before me, I am satisfied that these contributions sought by the Council are required to make the development acceptable in planning terms, and otherwise meet the tests for planning obligations at Paragraph 58 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
26. The appellant has indicated agreement to each obligation, with the exception of the permit-free requirement, and has stated that an agreement would be submitted to the Council during the course of the appeal. That was in August 2024. No signed agreement is before me pertaining to the application forming the subject of this appeal. The appellant has provided a copy of an agreement dated 11 July 2024, but this relates to the subsequently approved planning permission Ref 240393, as clearly stated in the definition of 'application' under Section 2. It also has redacted signatures and no Council seal. It also contains a draft decision notice for permission Ref 240393 under Schedule 5. Thus, this is not a completed agreement relevant to the current appeal scheme. It is not capable of having legal effect or enforceable. As such, it does not carry any weight in consideration of the appeal.
27. Moreover, having regard to the Planning Practice Guidance, I have not identified any exceptional circumstances that would justify use of negatively worded conditions requiring a planning obligation or other agreement to be entered into as an alternative to a planning obligation.
28. Absent a completed legal agreement, the proposal would fail to mitigate its impacts on local infrastructure and climate change. It would conflict with the aims of Policies 65, 85, T4 and the SPD, and also with Policies 3 and 94 of the LPP1 which require proposals to make viable provision for infrastructure necessary to accommodate additional demands arising from growth, to be achieved through measures to directly mitigate their impact and make them acceptable in planning terms.

Nature Conservation Sites

29. The Council seeks a contribution towards Strategic Access Management and Monitoring Strategies (SAMMS) to mitigate the impact of the development upon the Epping Forest Special Area of Conservation (SAC). The SAC is designated for the presence of several qualifying habitats and species. The conservation objectives of the SAC are to ensure that the integrity of the site is maintained or restored as appropriate and that the site contributes to achieving the favourable conservation status of its qualifying features. As the competent authority at the appeal stage, I have a statutory duty to ensure that the integrity of this area is not harmed. Policy 81 of the LPP1 reflects this duty.
30. The SAC is subject to recreational pressures that have potential to adversely impact on the nature conservation of the site, including from residents living within the wider Zone of Influence (ZOI) of the SAC, which includes the appeal site. The Council has adopted the SAMMS to address these issues through a framework of financial contributions from new residential development to fund strategic mitigation measures and monitoring activities, including the enhancement of alternative spaces and corridors that can relieve the recreational pressure on Epping Forest.
31. I am satisfied that the contribution sought by the Council is required to make the development acceptable in planning terms. However, there is no completed legal agreement before me which would secure the contribution and, as above, there are no exceptional circumstances that would justify use of a negatively worded condition to require an agreement to be entered into in the alternative.

32. Consequently, the proposal would not mitigate its impact and would adversely affect the integrity of the protected site. Therefore, the proposal would conflict with the aforementioned protection of features of nature conservation under Policy 81. The proposal would further conflict with the Framework, which states that where significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Other Matters

33. The Council did not identify harm in any other matter, including neighbours' living conditions, cycle parking, waste storage, air quality, energy and water efficiency, and flood risk. On the evidence before me, I have no reasons to conclude otherwise. An absence of harm in these respects means they are neutral considerations in the overall planning balance.
34. The presence of a fall-back position for the appellant is a material consideration, but for the reasons set out, it would not represent a more harmful development overall when compared to the appeal scheme, and therefore it does not ultimately weigh in favour of the proposal in the planning balance.

Planning Balance and Conclusion

35. On the main issues, the proposal would fail to provide an adequate standard of accommodation for prospective occupants. It would also fail to mitigate its impact on local infrastructure and would fail to safeguard the integrity of the Epping Forest SAC. This results in conflict with the development plan, taken as a whole, to which I afford significant weight.
36. The proposal would deliver an additional dwelling in line with the key aim of the Framework of boosting the supply of housing nationally, albeit the small scale of this contribution means it is a factor attracting limited weight in the scheme's favour. It would also represent an improvement to the overall appearance of the site and would enhance the surrounding townscape, to which I afford moderate weight. There would be modest economic benefits from the construction of the dwelling and subsequent engagement by future residents in the local economy.
37. I am also mindful that the Framework states that substantial weight should be given to the value of using suitable brownfield land within settlements for homes, and proposals should be approved unless substantial harm would be caused. However, my finding that the proposal has the potential to adversely affect a site of European nature conservation designation is a significant and decisive issue in this case, which, in accordance with Paragraphs 11(d)(i) and 193 of the Framework provides a clear reason for refusing the development proposed and means that the presumption in favour of sustainable development does not apply in this case.
38. Therefore, in the overall balance, I conclude that material considerations in this case, including the Framework, do not justify a decision other than in accordance with the development plan. Consequently, the appeal should be dismissed.

K Savage

INSPECTOR