



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: 24th March 2025

Appeal Ref: APP/U5930/W/24/3344610

37 Morris Road, Waltham Forest, Stratford E15 2BQ

- The appeal is made under section 78 of the Town Country Planning Act 1990 (as amended) against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for planning permission following the failure to respond within the prescribed period to a notice served under Article 12(1) of the Town and Country Planning (Development Management Procedure (England) Order 2015 (as amended).
 - The appeal is made by Mr Ali Hayirli against Waltham Forest London Borough Council.
 - The application Ref is 240157.
 - The development proposed is change of use and conversion (with external alterations) 1 storey rear extension to form 2 flats and associated works.
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Decision

1. The appeal is dismissed, and planning permission for change of use and conversion (with external alterations) 1 storey rear extension to form 2 flats and associated works is refused.

Application for Costs

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

Preliminary Matter

3. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. Both main parties have had the opportunity to comment on any relevant implications for the appeal during the appeal process. I have had regard to the Framework in reaching my decision.

Background and Main Issues

4. The appeal has been submitted on the basis that the Council has failed to give notice of its decision within the appropriate period because of a dispute over provision of local list documentation. The Council has specified why it considers the application to be invalid, and has also set out its indicated reasons for refusal had it been in a position to determine the application.
5. On that basis, the main issues are whether the planning application as submitted is valid and, if so, whether the proposed development would be acceptable having regard to:
 - The living conditions of future residents with regards to internal living space, external amenity space, outlook, light and privacy; and
 - Cycle and refuse storage

Reasons

Validity

6. Based on the evidence before me, the crux of the matter of the validity of the application relates to the submission of the front elevation to include neighbouring elevations. The Council sets out that this is to enable full assessment of the scale of the development within the context of the neighbouring properties.
7. The appellant has referred to a plan (document title: 008r2.pdf) which they state was submitted with the application, and which was also submitted to the Council in response to its letter of 8 April 2024 regarding the invalid planning application. This plan shows the proposed development in the context of the existing buildings on either side, although it does not include buildings to the rear. Nevertheless, this plan provides suitable context to enable the scale of the development to be assessed.
8. The Council's Local Validation Requirements state that both the existing and proposed elevations should show the relationship to neighbouring buildings and include the positions of windows and doors on all buildings. The Council's letter of 8 April 2024 refers to the existing front elevation, rather than the proposed one. However, this suggests that the Council was content with the details provided on the proposed elevation, but required the same details to be shown on the existing elevation.
9. The appellant has disputed the need for the information sought by the Council and has followed the process set out in Article 12 of the DMPO¹ for dealing with such disputes. Article 12(1)(b) states that the applicant can serve a notice of a validation dispute to the Council when they consider any particulars or evidence requested do not meet the requirements set out in Article 34(6)(c) of the DMPO. Article 34(6)(c)(i) sets out that the particulars or evidence the Council require to be included in the application must be reasonable having regard, in particular, to the nature and scale of the proposed development.
10. It is a reasonable proposition that the relationship with nearby properties will be a material consideration², but the submitted plans when considered as a whole provide sufficient detail to enable the Council to determine the application. Given that the Council has not objected to the details provided on the proposed elevation, due to the limited nature and scale of the proposal I consider that it was not reasonable for the Council to require that the same details are repeated on the existing elevation.
11. I therefore conclude that the appellant has provided the necessary evidence and that the application was validly made. On that basis, the appeal is one against the non-determination of the application by the Council and I shall proceed to consider the planning merits of the case with reference to the Council's indicated reasons for refusal.

Living Space

12. Policy D6 of the London Plan 2021 relates to housing quality and standards, including the consideration of private internal space and outdoor space. In a

¹ Town and Country Planning (Development Management Procedure)(England) Order 2015

² Article 34(6)(c)(ii) of the DMPO

Previous Appeal Decision³ for a proposal on the appeal site, an Inspector found no direct relevance to Policy D6 as they considered it refers to the implications of good design, and not living conditions. However, it is clear that Policy D6 is relevant to the identified living conditions issues, and I have had regard to it accordingly.

13. The Council contends that Flat 2 of the proposal would not meet the required internal space standards for a 1-bedroom 2-person dwelling. However, they refer to a required standard of 58sqm which relates to a dwelling set over 2-storeys. Flat 2 is a single storey dwelling, and based on the evidence before me it would exceed the standard of 50sqm. This would also allow extra space within the dwelling for the provision of built-in storage.
14. However, Flat 2 includes a room described as a 'study room'. Despite that description, the room is of a suitable size for a single bedroom and there is no evidence before me to demonstrate that the 'study room' could not be used as a bedroom. It is therefore appropriate to assess Flat 2 as being a 2-bedroom 3-person dwelling. On that basis, Flat 2 would not meet the required standard of 61sqm of internal living space, with commensurate harm to the living conditions of residents due to inadequate internal living space and storage space.
15. Policy D6(8) of the London Plan also sets out that the minimum floor to ceiling height must be 2.5m for at least 75 per cent of the Gross Internal Area of each dwelling. This is required so that new housing is of adequate quality, especially in terms of daylight penetration, ventilation and cooling, and sense of space. The maximum ceiling height for both flats is 2.3m which would be materially less than that required, with resultant harm to the living conditions of residents. Due to the slope of the roof, areas of Flat 2 would also be below the 2.3m ceiling height, which adds to my concerns on this matter.
16. As a 2-bedroom 3-person dwelling, the external amenity space for Flat 2 would also be marginally below the relevant standard. However, the Council considers that the space provided should be sufficient for 3 residents, and I see no reason to disagree.
17. The bedroom for Flat 1 would look onto a garden surrounded by high means of enclosure and buildings. Even allowing for the size of the garden exceeding the minimum standard and the use of large folding glazed doors, I consider that the outlook from this room would be unduly enclosed and oppressive, and it has not been demonstrated that it would receive appropriate amounts of daylight and sunlight.
18. The Council refers to the outlook from windows of the proposal onto a driveway/alleyway shared with No 36. However, this does not reflect the submitted plans. The Council also refers to a loss of privacy for residents of Flat 1 due to occupants of Flat 2 having access along the side of the building. However, the affected windows are secondary windows or would have obscured glazing, and due to this arrangement and the nature of the access I do not consider that the effect on privacy would be unacceptable. With regard to wider privacy issues, the layout of the proposal and the relationship with neighbouring properties is such that there would be no unacceptable overlooking or loss of privacy arising from the proposal.

³ Appeal Decision APP/U5930/W/21/3285233

19. Some windows of Flat 1 would look onto an enclosed access way, but these are either secondary windows or do not serve main habitable rooms. Windows and a balcony area of Flat 2 would also look over a neighbouring flat roofed building and would provide an appropriate outlook and levels of light. However, a lack of harm on these matters does not negate my conclusions in respect of outlook and light from the bedroom to the rear of Flat 1.
20. The appellant submits that the Inspector in the Previous Appeal Decision considered Flat 2 to be acceptable. However, the previous Inspector's conclusions related to outlook and light. The Previous Appeal Decision does not lead me to a different conclusion in relation to internal living space and ceiling heights.
21. Drawing the above together, I conclude that the proposal would not provide suitable internal living space in respect of ceiling heights for both flats as well as internal space and storage for Flat 2. The proposal would also provide inadequate outlook and light in respect of the bedroom for Flat 1. These matters would lead to significant harm to the living conditions of future residents. The proposal would therefore be contrary to the housing quality and amenity requirements of Policies 56 and 57 of the Waltham Forest Local Plan 2024 (the Local Plan) and Policy D6 of the London Plan. Flat 2 of the proposal would also not comply with the Technical Housing Standards – Nationally Described Space Standard.
22. Policy 20 of the Local Plan is not relevant as this relates to houses in multiple occupation or the conversion of existing dwellings, neither of which applies to the appeal proposal.

Cycle and Refuse Storage

23. The Council refers to insufficient information being submitted in relation to the cycle and refuse store. However, there are bin and cycle stores proposed to the rear of the site, and the Council has not demonstrated that these are unsuitable for their proposed use. The Council refers to the massing, bulk and form of the refuse and cycle storage. But based on the submitted plans these features could be provided in a manner that would not lead to any harm to the site and its setting. Based on the evidence before me, these matters could be addressed by condition and do not therefore represent a reason to withhold planning permission.
24. The Council states that its Waste and Recycling Team were not provided an opportunity to comment on the proposed waste management arrangements. However, it has had the opportunity to do this as part of the appeal process, and despite that it has confirmed that no internal or external department was consulted regarding this appeal notification. The Council has therefore not substantiated its concerns in respect of waste storage.
25. Subject to an appropriate planning condition, the proposal would make suitable provision for cycle and waste storage. The proposal would therefore comply with Policy D4 of the London Plan and Policy 53 of the Local Plan with regards to the design of developments which are fit for purpose.

Other Matters

26. The appellant has submitted a Unilateral Undertaking in response to the Council's Appeal Statement. However, as I have dismissed the appeal for other reasons then I do not need to consider this matter further.

27. There is a dispute between the Council and the appellant as to whether the planning application fee has been returned. However, this is a matter between the main parties and does not fall within the scope of this appeal.
28. I am mindful of the benefits of the proposal. It would add to the supply and mix of housing in the area on previously developed land. There would be economic benefits during the construction of the proposal and future residents would support local services. However, given the scale of the development these considerations carry limited weight in favour of the appeal. The proposal would represent a visual improvement to the appearance of the site, but given the existing context of nearby commercial uses this carries little weight in favour of the proposal.

Conclusion

29. Notwithstanding my conclusions in relation to cycle and refuse storage, the proposal would lead to significant harm to the living conditions of future residents of the proposal. The proposal would therefore be contrary to the development plan when read as a whole with regards to housing quality and amenity.
30. 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