



Appeal Decision

Site visit made on 15 October 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2025

Appeal Ref: APP/J1535/W/25/3368577

181-185 Impact House, High Road, Chigwell, Essex IG7 6NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Whitton (Impact Developments Chigwell Ltd) against the decision of Epping Forest District Council.
 - The application Ref is EPF/0415/25.
 - The application sought planning permission for demolition of existing buildings to create new residential development providing 14 new flats and ground floor commercial/retail space, without complying with conditions attached to planning permission Ref EPF/0218/18, dated 25 July 2018.
 - The conditions in dispute are Nos 2 and 8 which state that:
 - 2) *The development hereby permitted will be completed strictly in accordance with the approved drawings nos:*
 - FMN 001*
 - FMN 002*
 - FMN_100 revision C*
 - FMN_101 revision G*
 - FMN_105 revision G*
 - FMN_106 revision G*
 - Noise and Vibration Assessment report by Temple dated 12 September 2014*
 - Arboricultural Report by Andrew Day dated 29 September 2014 with Tree Protection Plan*
 - Design and Access Statement*
 - 8) *The privacy screen, as shown on the roof plan to drawing FMN_101 revision G and rear elevation to drawing FMN_105 revision G, shall be constructed of a opaque and solid material prior to first occupation of either third floor flat and maintained as such thereafter.*
 - The reasons given for the conditions are:
 - 2) *To ensure the proposal is built in accordance with the approved drawings.*
 - 8) *In the interest of the privacy of occupiers of residential properties on Dickens Rise in accordance with policy DBE9 of the Local Plan and Alterations and the provisions of the National Planning Policy Framework.*
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against Epping Forest District Council. This application is the subject of a separate decision.

Background and Main Issue

3. The application relates to an approved mixed-use development including 14 flats. Planning permission was initially granted in December 2016 under reference

EPF/1919/16. A further planning permission was granted in July 2018 under reference EPF/0218/18 for variation of the condition specifying the approved plans. The conditions which are the subject of this appeal were attached to that planning permission.

4. The flats have been built and occupied without installation of the privacy screen shown on the approved plans and required by condition 8. The Council reports that the application was submitted after a Breach of Condition Notice had been served. The application was considered under s73 of the Town and Country Planning Act 1990, as stated on the decision notice. However, on the understanding that conditions 2 and 8 had already been breached when the application was made, s73A is applicable and I have considered the appeal on that basis. Since non-compliance with the approved plans and condition 8 is acknowledged by both parties, I am satisfied that no unfairness would arise as a result.
5. The application seeks variation of conditions 2 and 8 to allow for a lower privacy screen to be installed, together with an additional balustrade set back from it. The main issue is the effect that varying conditions 2 and 8 would have on living conditions for occupiers of neighbouring properties on Dickens Rise.

Reasons

6. The appeal site contains a four storey building above a basement car park. The top floor contains two penthouse flats, each with a sizable outdoor area. This is referred to by the parties as a balcony, but it is described as a terrace on the approved plans and, given its extent, that is a more accurate description. The privacy screen required by condition 8 would be along the length of the rear terrace, which serves Flat 13, and the approved plans specify that it would have a height of 1.8m. Internally, Flat 13 includes an open plan living area with full height windows and patio doors around the corner of the building, providing access onto the terrace. The other main rooms are arranged along the length of the terrace and also have glazed openings onto it.
7. The development backs onto an adjacent site where another development of flats is at a fairly advanced stage of construction. In the rear part of that site, the top floor flats are below the penthouse storey on the appeal site. The area directly behind the appeal site is largely open, and paths and paved areas were being laid at the time of my site visit. Immediately beyond that are several longer-established dwellings along Dickens Rise. These have rear-facing ground and first floor windows and small back gardens, with a variety of trees and hedges along the boundary, above a timber lapped fence.
8. Currently, there is an expansive view from Flat 13, over the existing railing. From the terrace, this includes views of the rear gardens along Dickens Rise and several of the rear-facing windows. Some areas are screened by the boundary vegetation. However, although this was in leaf at the time of my site visit, its effectiveness as screening would be significantly compromised in the winter months, or if the trees and hedges should die back or become damaged.
9. The appeal building is a prominent and somewhat imposing presence behind the properties on Dickens Rise. It is considerably taller than those dwellings and also on an upwardly sloping site. The terrace extends across the whole rear elevation of the building, and it is spacious enough for prolonged and potentially intensive use. Its position and extent can easily be perceived from ground level and there is

a palpable sense of intrusion from the perspective of the nearby dwellings. As approved, the privacy screen would address that, by obstructing any view of the nearby gardens and dwellings. It would also provide a visible barrier, reducing the sense of intrusion when looking up towards the development.

10. It is intended that the proposed internal balustrade would prevent occupiers of Flat 13 from standing close to the edge of the terrace. If so, the cross-section drawing illustrates that the lower (1.2m) privacy screen would then obscure the view of anyone standing behind the balustrade into the Dickens Rise properties. From my observation on site, I agree that would be the case.
11. The layout would, however, reduce the available area on the terrace and create an odd arrangement of two long, thin outdoor areas separated by a 1.2m high barrier. While the overall area might be adequate in principle, its layout would be rather convoluted. Although it would take some effort, the inner balustrade could be climbed over, to make use of the outer area. A barbeque, storage chest and planters were positioned around the edge of the terrace at the time of my site visit, and the area could feasibly still be used for similar purposes, even with the inner balustrade in place. Therefore, the arrangement would be less reliably effective than the approved privacy screen. The lack of a visibly taller screen would also fail to address the perception of intrusion from the perspective of nearby occupiers, which is in itself somewhat detrimental to their sense of privacy.
12. The balconies and windows of the flats on lower floors also look towards Dickens Rise and there are oblique views from the upper windows of the flats currently under construction. However, these openings and balconies are lower down. They are also significantly smaller than the terrace, so do not have a similar capacity for prolonged and intensive use. Both the sense of intrusion and the need for that to be mitigated is less acute.
13. Without the privacy screen, there is a very attractive, panoramic view from the terrace and windows of Flat 13. The alternative arrangement would enhance living conditions for the occupiers of the flat, since the terrace would feel less enclosed and an expansive outlook would be available. However, there is a trade-off between those benefits to the occupiers of Flat 13 and the sense of privacy in other nearby properties.
14. Since the approved plans of Flat 13 included the privacy screen, and condition 8 clearly requires that it is installed, any prospective occupiers should have been able to assess whether the more enclosed terrace was acceptable to them. As approved, it would still provide a substantial, usable outdoor space. There would still be an attractive view from the large corner windows and from the section of terrace just outside the main living space. The other rooms would have an acceptable outlook onto the terrace. That being the case, to my mind, any detrimental effect of the approved screen on the outlook from this single flat does not outweigh the adverse effect of the less effective alternative on occupiers of several nearby properties.
15. I therefore conclude that varying conditions 2 and 8 as proposed would have an unacceptably harmful effect on living conditions for occupiers of neighbouring properties on Dickens Rise. That is not outweighed by the benefits to living conditions for the occupiers of Flat 13. On that basis, the conditions are reasonable in their current form and they are also necessary to make the

development acceptable in planning terms. It has not been alleged that they are inconsistent with any of the other tests for planning conditions in the National Planning Policy Framework (the Framework).

16. The proposed variation would conflict with Policy DM9 of the Epping Forest Local Plan 2023 which requires, amongst other things that development should be designed to avoid overlooking and loss of privacy detrimental to the living conditions of neighbouring occupiers. It would also conflict with relevant requirements in the Framework, notably the requirements in paragraphs 131 and 135 for good design to create better places in which to live, including development which provides a high standard of amenity for existing and future users.

Other Matters

17. The proposal also includes a privacy screen between Flats 13 and 14, to separate and define the areas available to occupiers of each flat. In fact, there was a section of trellis in that position at the time of my site visit. The Council did not allege any harm in relation to that aspect of the proposal, and I concur that it would be uncontentious. Nevertheless, that does not alter my conclusions on the main disputed issue.

Conclusion

18. For the reasons given above the appeal should be dismissed.

Jane Smith

INSPECTOR