Appeal Decision

Site visit made on 10 October 2017

by A J Mageean  BA (Hons) BPI PhD MRTP

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th November 2017

Appeal Ref: APP/Z5060/W/17/3178458

Land to the rear of 82-94 High Road, Back Lane, Romford RM6 6NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Ashton’s Development Company Ltd against the decision of the Council of the London Borough of Barking & Dagenham.
- The application Ref 16/01708/OUT, dated 31 October 2016, was refused by notice dated 29 December 2016.
- The development proposed is demolition of existing garages and erection of 8 two bedroom flats with associated car parking and landscaping.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters except access reserved for consideration at a later stage. Therefore the ‘Block Plan and Floor Plans’ and ‘Indicative Front Elevation and Street Scene’ submitted with the application are for illustrative purposes only and I have regarded them as such in my decision.

3. Whilst the site referred to in the application is 82-94 High Road, I note that the site plan and the appellant’s statement refer to 78-94 High Road. I have therefore referred to these additional properties in my decision.

Main Issues

4. The main issues are the effect of the proposal on the living conditions of the occupiers of 78-94 High Road with particular reference to the provision of private garden space, privacy and outlook; whether the future occupiers of the flats would experience acceptable living conditions with particular reference to privacy; and, the effect of the development on the safety of pedestrians and other road users in the vicinity of Back Lane.

Reasons

Living conditions – private garden space for existing occupiers

5. The appeal site comprises a large portion of the rear garden and garage areas associated with 9 semi-detached buildings which are divided into 18 ground and first floor flats. Both upper and lower floor flats appear to have separate rear back doors, and external staircases in the case of the first floor flats, providing access to long narrow gardens. Contrary to the appellant’s view that the majority of these gardens are neglected, I noted on my site visit that most of
these gardens appear to be well maintained and used, containing the usual range of garden accessories including furniture, play equipment and washing lines. I also noted that two of these garden areas had been fenced across to reduce their length. Nevertheless, it is clear from the representations received from the tenants of these properties that many of these gardens are much valued.

6. The proposed site area would reduce the rear gardens of these two bedroom properties to about a third of their current size, with the area of those relating to upper floor flats measuring around 20m², though the ground floor flats would retain an area up to around 38m². Policy BP5 of the Barking and Dagenham Borough-Wide Development Policies Development Plan Document 2011 (DPD) states that the minimum standard of amenity space for new two bedroom flats is 40m². This Policy acknowledges that there may be scope for reducing this standard in town centre locations. The Council’s transport adviser notes that the appeal site is located in an area with a ‘good’ Public Transport Accessibility Level (PTAL) of 4, and I accept that the appeal site is well located in relation to a range of services and facilities. However there is no evidence that this is a town centre location before me and as such there is no justification for the reduction in garden size to the degree proposed.

7. The appellant refers to appeal decisions relating to the demolition of two existing dwellings and the construction of four replacement dwellings close to the centre of Brentwood.¹ In these cases the Inspector concluded that in town centre locations the rigid application of standards does not always make best use of land. This approach is consistent with Policy BP5. However, whilst I am not aware of the full circumstance of the decisions, I do not agree that in terms of location the current appeal is comparable.

8. I understand that the existing flats are held on short term tenancies. As such the appellant states that tenants/occupiers have the choice of deciding whether reduced garden areas would meet their needs. However it is clear from the representations received that many existing tenants have lived here for some time. Whilst these residents could also have access to the communal garden areas of the proposed dwellings, noting that Policy BP5 also refers to communal amenity space, this would not effectively address the loss of the existing private space relating to these dwellings.

9. The garages which front onto Back Lane have been neglected and appear in a state of despair. The appellant suggests that they attract anti-social behaviour, though no evidence on this point is presented. However, options for the improvement of the appearance of this area are not restricted to the development proposed in this case. This point does not therefore justify the reduction in these garden areas.

10. Finally, the appellant also refers to two appeal decisions in which flats with inadequate amenity space have been accepted by Inspectors.² I am not aware of the full circumstances of these cases, though it is clear that they both relate to the conversion of larger dwellings into flats, whereas the current case relates to the development of rear garden areas. As such these cases are not directly comparable.

¹ APP/H1515/A/04/1160828 & APP/H1515/A/05/1177278
² T/APP/P1615/A/86/S1542/P4 and T/APP/F1420/A/88/86704 & 96725/P2

https://www.gov.uk/planning-inspectorate
11. I therefore find that the reduction in the size of private gardens would have a significant and detrimental effect on the living conditions of the occupiers of these properties. Whilst I note the appellant’s point that as the landlord of these properties their garden size could be reduced without the need for planning permission, I must determine this case on the matters before me.

Living conditions – privacy and outlook for existing and future residents

12. The rear facing windows in the new dwellings would be located around 17m from the rear elevations of the existing flats. The appellant quotes the Mayor of London Housing Supplementary Planning Guidance which states that whilst 18-21m has been quoted as a minimum privacy distance between habitable rooms in the past and remains a useful yardstick, this can sometimes unnecessarily restrict density. I accept that this can be the case and also note the point that designers should consider the positions and aspects of habitable rooms, and avoid windows facing each other where privacy distances are tight.

13. In this case privacy distances are indeed tight and the proposal would involve rear facing windows located directly opposite each other, which at first floor level would lead to unobstructed two-way views. The indicative layout of the new dwellings suggests that the rear facing windows would relate to kitchens and living rooms and the obscure glazed windows of bathrooms. In quoting guidance from another London Borough the appellant suggests that whilst living rooms are regarded as habitable rooms they generally require less privacy than bedrooms and bathrooms. However, it appears that the windows on the rear elevations of the existing dwellings relate to kitchens and bedrooms. It is therefore important to protect the privacy of this aspect. As such the degree of overlooking resulting from both the narrow separation gap and the parallel positions of the rear elevations of these properties would lead to an unacceptable loss of privacy for existing occupiers.

14. Whilst not a reason for refusal, the Council’s officer report also refers to the effect of the close proximity of the existing and proposed dwellings on outlook for residents. The occupiers of the new flats as new residents may not consider this aspect of the scheme to be unacceptable. Nonetheless it is clear that the outlook for the occupiers of the existing flats would be significantly altered and that, in comparison with their current immediate outlook over rear gardens, their views of the new properties would appear intrusive and overbearing. The appellant has suggested that a condition relating to the details of internal layout could overcome such concerns. However it is not clear to me how this could be achieved.

15. The appellant states that under permitted development rights extensions of over one storey are not permitted if within 7m of any boundary. It is suggested that this would allow for two adjacent properties to extend which could result in a separation distance of 14m between two storey rear extensions. However, whilst I accept that privacy and outlook issues could arise, this would not be on the scale proposed in the present case.

16. Finally, the overlooking of private garden areas must also be considered. In higher density development in urban areas some degree of overlooking of garden areas is to be expected. This is the case with the existing properties where the occupiers of the first floor flats overlook adjacent gardens. As the amenity area associated with the new flats would be largely communal, privacy concerns would be less significant. Similarly whilst the much reduced private garden areas of the
existing flats would experience increased overlooking from the first floor windows of the new flats, this in itself would not be unacceptable.

17. Pulling all of these points on living conditions together, I have found that the future occupiers of the proposed flats would not experience unacceptable living conditions in terms of privacy. I have also accepted that the occupiers of the existing properties would not experience privacy issues in their garden areas. However, I have found significant harm in relation to the living conditions of the occupiers of 78-94 High Road with reference to the provision of private garden space, privacy within their homes and outlook. As such the proposal would not comply with the DPD Policies BP5, BP8 or BP11 which seek to protect residential amenity including the provision of external space and the protection against loss of both privacy and immediate outlook.

Highway safety

18. This section considers the effects of both the proposed point of access to the site and also the intensification of the use of Back Lane on pedestrian and highway safety. Back Lane is a narrow unadopted road which serves the garages to the rear of both the High Road properties and also Eric Road to the south. At the time of my site visit during the middle of a weekday there were cars parked along much of its length, reducing the carriageway width. It is clear that pedestrians currently use this route as a cut through from St Chads Road to other roads within the local street network. However, as there is no dedicated footpath and limited lighting, any intensification of pedestrian use must be carefully considered.

19. Back Lane would provide the main entrance to the 8 additional residential units, with the indicative plans illustrating that a dedicated parking space would be provided for each dwelling. Whilst not all of the existing garages provide parking for the residents of 78-94 High Road, it is clear that due to the parking restrictions in place on High Road between Monday and Saturday 8am-6.30pm, Back Lane provides an area for informal parking.

20. The use of Back Lane by the occupiers of the existing properties and the 8 new flats would result in an increase in the number of vehicles, pedestrians and cyclists accessing Back Lane on a regular basis. Whilst the indicative plan illustrates that a shared surface of around 1m would be provided in front of the new dwellings, the likely number of vehicles parking in this area would negate the effectiveness of this limited provision.

21. The appellant notes that the distances pedestrians would have to travel to either St Chads Road or Junction Road West would be 38m and 70m respectively, and suggests that this journey is comparable to passing along a standard pavement with crossing driveways. However, my view is that in contrast to standard pavements in which pedestrian priority is usually clear, the extent of this undefined and narrow carriageway, which could have a significantly increased number of users, would result in pedestrian safety being compromised.

22. Reference is made to the previously approved redevelopment of six garages to provide a bungalow\(^3\) further to the west along Back lane. In this case the appellant notes that Back Lane is even narrower at this point and that there is only a narrow strip of pavement. However, as this new dwelling is located

\(^3\) 13/00128/FUL
23. Turning to look at parking issues more specifically, few of the existing garages are used for off road parking. A number of objectors state that tenants park in Back Lane. I also understand that the garages are to be demolished whatever the outcome of this appeal. As such it does not appear that the proposal would itself result in the loss of off-road parking provision.

24. However, the demand from existing residents for informal parking along Back Lane would remain. This scheme would also result in the length of Back Lane available for parking being reduced. It is also likely that the occupiers of the new flats would seek to make use of the areas in front of their dwellings for additional parking. This area has a ‘good’ accessibility rating with public transport links close by and some parking is available outside the control times on High Road. Nevertheless, insufficient consideration has been given to the implications of this scheme for the parking available to existing residents, particularly given the likely overall increase in parking pressures on Back Lane.

25. The appellant again refers to the previously approved scheme on Back Lane in which six existing garages were demolished and a one bedroom bungalow was constructed. In this case it was found that the garages did not provide off road parking for nearby dwellings and as such their loss would not lead to an increase in pressures for on-street parking spaces. No mention is made of any existing parking pressures on Back Lane. In contrast, as the present case would impact on a greater number of existing properties, and involve the creation of 8 additional two bedroom dwellings, it is clear that pressures on parking on Back Lane would be far more pronounced than in this previous case.

26. Therefore, whilst the loss of the existing garages would not in itself lead to the loss of parking provision for existing residents, it has not been demonstrated that the implementation of this scheme would result in these residents having satisfactory parking provision. As a result the additional parking pressures and congestion in the vicinity of the appeal site would have a harmful effect on highway safety in what is a poorly lit and restricted area.

27. Whilst not referenced as a reason for refusal in this case, the London Fire and Emergency Planning Authority expresses concern regarding the restricted space for access by fire appliances, particularly given the presence of parked cars in this area. This point adds to the safety concerns of this proposal.

28. Pulling these threads together, I conclude that the nature of this development and its proposed access point would have a detrimental effect on the safety of pedestrians and other road users in the vicinity of Back Lane. As such the scheme would conflict with the DPD Policies BR9 and BR10 which require the effect of development on the surrounding transport and road network to be assessed and, specifically, the impact of street parking to be managed so that the street can be easily and safely crossed at many points by pedestrians, including people using wheelchairs.

Other Matters

29. The appellant notes that the site including the existing properties has a density of 62 dwellings per hectare (dph), and suggests that the increase to 90 dph would
make efficient use of this land, introducing further small family housing characteristic in this area. The appellant also makes reference to the London Plan’s suggested densities for such a location which indicates a range of between 45-120 dph (this relates to a PTAL rating of 2 to 3; with a PTAL rating of 4 to 6 this rises to 45-185 dph). As such both the current and proposed situations are in range. However, as the London Plan notes, it is not appropriate to apply these provisions mechanistically. Of greater significance to the determination of appropriate densities is the consideration of local contextual factors. Such factors have been explored in detail in this case and it has been demonstrated that the site is not able to support the increase in density proposed.

30. The appellant submits that the Council do not have a five year housing land supply, which has not been disputed. In such circumstances the National Planning Policy Framework (Framework) advises that relevant development plan policies relating to the supply of housing should not be considered up to date (paragraph 49), and planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (paragraph 14). I therefore accept that the 8 proposed dwellings would make a modest contribution to the housing supply, and that this weighs in favour of the proposal.

31. It is also relevant to consider the presumption in favour of sustainable development as the golden thread running through the Framework. The three dimensions of sustainable development are economic, social and environmental. In terms of the contribution to housing supply in the Borough this scheme would bring moderate economic and social benefits, and in environmental terms this location has a good level of access to local services and facilities as well as public transport. These points taken together weigh moderately in favour of this scheme. However, set against these considerations I have concluded that there would be harm to the living conditions of the existing occupiers of 78-94 High Road and that road safety would be compromised. The magnitude of these harms would be considerable, such that, even if I were to conclude that there is a shortfall in 5 year housing land supply on the scale suggested by the appellant and that relevant policies for the supply of housing should not be considered up-to-date, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Therefore the presumption in favour of sustainable development does not apply.

Conclusion

32. I am aware that the appellant has been working on proposals relating to this site for a number of years, and that the present scheme includes modifications to reflect the feedback on earlier proposals. However, I have found that the proposal would not accord with the development plan taken as a whole and there are no other material considerations to outweigh this finding. So, for the reasons given above, the appeal is dismissed.

AJ Mageean
INSPECTOR