

LONDON BOROUGH OF WALTHAM FOREST

Committee/Date:	3 rd June 2025
Application reference:	250029- Section 96A 242833- Section 73
Applicant:	Ajay Malde
Location:	694 High Road Leytonstone, Leytonstone, London, E11 3AA
Proposed development:	250029 (Section 96A) to planning permission reference 240869, granted on 08/08/2024, to include 'a terrace' in the description: <i>"Re-development of the site at 694 High Road Leytonstone involving the construction of a roof extension to facilitate the extension of the first floor level comprising two self-contained flats with roof terrace to 1 unit (1 x 1-bed and 1 x 2bed) (Use class C3) and retention of the existing ground floor and commercial space (Use Class E)"</i> 242833 (Section 73) to vary Condition 2 (Approved Plans) attached to planning permission reference 240869 granted 08/08/2024 to allow for alterations to the approved drawings to include an amenity terrace to Flat 1.
Wards affected:	Leytonstone
Appendices:	None

1. RECOMMENDATION

- 1.1. 250029 - That Permission be **GRANTED** subject to informatives.
- 1.2. 242833 -That Permission be **GRANTED** subject to conditions and informatives.

2. REASONS REFERRED TO COMMITTEE

- 2.1. These cases have been referred to Committee due to significant public interest and at the request of Cllr Marie Pye.

3. SITE AND SURROUNDING AREA



Location of the application site showing the existing and approved development with the Grade II Listed terrace at the rear.

- 3.1. The site comprises a former NatWest Bank, a single-storey commercial building constructed in a Neo-Georgian style, located at the junction of High Road Leytonstone and Aylmer Road. The building was previously extended with part single-storey and part two-storey additions to the rear, constructed between 1964 and 1988. Historically, the property was in use as a bank with ancillary office space on the upper floor and to the rear. It has remained vacant since the closure of the branch in 2018.



The photograph shows the application site prior to any extensions being built. The proposed terrace would occupy 10m² and be located behind the two-storey red brick extension to the main building.

- 3.2. Planning permission was granted under application reference 240869 on 08/08/2024 for development on the site, including the construction of a roof extension to facilitate the enlargement of the first-floor level to provide two self-contained flats (1 x 1-bedroom and 1 x 2-bedroom) (Use Class C3), with retention of the existing ground floor commercial unit (Use Class E). This permission has been implemented, and the development is now at the final stages of construction.
- 3.3. The existing lawful use of the site falls within Use Class E (financial and professional services). The site is located within the Leytonstone District Town Centre, positioned within a designated Secondary Frontage and adjoining a Primary Frontage. The property is not within a Conservation Area, but the building is Locally Listed. It is also located adjacent to a Grade II-listed Georgian terrace (Nos. 694a, 696a, and 698a) to the rear of the site.

4. APPLICATION PROPOSAL

Section 96A – (Ref: 250029)

- 4.1. The applicant seeks a non-material amendment to planning permission reference 240869 (dated 08/08/2024) which was approved for the *"Re-development of the site at 694 High Road Leytonstone involving the construction of a roof extension to facilitate the extension of the first-floor level comprising two self-contained flats (1 x 1-bed and 1 x 2bed) (Use class C3)*

and retention of the existing ground floor and commercial space (Use Class E)".

- 4.2. The proposed non-material amendments seek to change the description of the approved scheme to include a terrace in the description. The amended description would therefore read:

"Re-development of the site at 694 High Road Leytonstone involving the construction of a roof extension to facilitate the extension of the first-floor level comprising two self-contained flats with roof terrace to 1 unit (1 x 1-bed and 1 x 2bed) (Use class C3) and retention of the existing ground floor and commercial space (Use Class E)".

- 4.3. The proposed alteration must be read alongside the Section 73 – Minor Material Amendment application (Ref: 242833), also on this agenda. The two applications are interdependent, and their assessment should be considered together

Section 73 – (Ref: 242833).



The first image illustrates the approved development as granted under the original permission. The second image shows the proposed development, with the terrace addition clearly highlighted in red.

- 4.4. The application seeks planning permission under Section 73 of the Town and Country Planning Act 1990 to vary Condition 2 (Approved Plans) attached to planning permission reference 240869, granted on 08/08/2024. The original permission was for the redevelopment of the site at 694 High Road, Leytonstone, involving the construction of a roof extension to facilitate the extension of the first-floor level to provide two self-contained flats (1 x 1-bed and 1 x 2-bed) (Use Class C3), while retaining the existing ground floor commercial unit (Use Class E). The proposed amendment involves the addition of a 10m² private terrace to Flat 1 at first-floor level, accessed via a new door replacing an existing window. The terrace would be positioned facing Aylmer Road and set back approximately 2.5 metres from the edge of the structure below.

4.5. The amendment to the description of development is addressed separately under Section 96A application reference 250029. The variation of Condition 2 would result in the replacement of the following previously approved plans:

- **Site Plans:**
Superseded: 23_697-220-P2 (Existing & Approved)
Replaced by: 23_697-220-P3 (Existing & Proposed)
- **Plans and Elevations:**
Superseded: 23_697-221-P2 (Existing & Approved)
Replaced by: 23_697-221-P5 and 23_697-221-P6 (Existing & Proposed)
- **Street Scenes:**
Superseded: 23_697-222-P1 (Existing & Approved)
Replaced by: 23_697-222-P2 and 23_697-222-P3 (Existing & Proposed)
- **Sections:**
Superseded: 23_697-223-P2 (Existing & Approved)
Replaced by: 23_697-223-P3 and 23_697-223-P4 (Existing & Proposed)

4.6. For reference, the existing floor plans (23_697-224-P1) remain unchanged. Supporting documents with the previously approved application also remain unchanged. These include include a Design and Access Statement (V2, dated 1st March 2024), an Energy and Sustainability Report by Energy Performance & Sustainability Group Ltd (dated 10th May 2024), and a Heritage Statement.

5. RELEVANT SITE HISTORY

A. Planning

5.1. **Application reference: 213834**

Proposal: Construction of a roof extension to create additional two floors to provide 4 residential self-contained units comprised of (4 x 2-bedrooms) (Use Class C3). space (Use Class E).

Decision: This application was recommended for approval by planning officers; however, the Planning Committee resolved to refuse planning permission, overturning the officer recommendation. The decision was issued on 21 July 2022.

Summary of Reasons for Refusal (as given by the Planning Committee):

1. Impact on the character and appearance of the area and the setting of the adjacent Grade II Listed three-storey Georgian terrace (694a, 696a and 698a) specifically due to the building's height, position and design.
2. Substandard accommodation due to the lack of private amenity space.
3. The officer's report also mentioned car-free development, but this was not progressed because the application was refused.

- 5.2. Following the refusal, an appeal was made under reference APP/U5930/W/22/3311375. The appeal, however, was dismissed with the following findings:

REASON 1: The Planning Inspector dismissed the appeal, concluding that although the proposed development would be in keeping with the general character and appearance of the wider area, it would result in less than substantial harm to the setting and significance of the adjacent Grade II listed buildings at 694A, 696A and 698A High Road. The key reasons are as follows:

Impact on Setting of Listed Buildings:

The Inspector found that the proposed increase in height at No. 694 High Road would further obscure views of the distinctive roofscape of the adjacent listed terrace in views from Kirkdale Road and around its junction with High Road. Although the terrace is already partially obscured, the proposed development would further reduce its visual legibility, which contributes to its historic and architectural significance.

The harm to the setting of the listed buildings was assessed as less than substantial under the National Planning Policy Framework (NPPF). However, the Inspector emphasised that such harm must still be given considerable importance and weight in the decision-making process under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

REASON 2: Although the proposal did not provide dedicated private outdoor amenity space for future residents, the Inspector found this to be acceptable for the following reasons:

London Plan Policy D6 sets out minimum standards for private outdoor space and Local Plan Policy DM7 sets a higher standard, however the supporting text to Policy DM7 allows for a flexible approach depending on site-specific circumstances.

- The site is located close to Henry Reynolds Gardens and other large public parks, which offer a range of outdoor amenities and are readily accessible to future occupiers, providing a practical alternative to private space.
- The development is situated on High Road, with cafés, shops, and other leisure facilities within walking distance, as well as excellent public transport links including Leytonstone Station and local bus services, giving residents convenient access to a broader range of services and facilities.
- The surrounding area has a dense urban form, with many existing buildings that lack spacious plots or private outdoor space. As such, the proposal would not be out of character with the local context.
- Taking all these factors into account, including the site constraints and proximity to public open space and services, the Inspector concluded that the

development would still provide acceptable living conditions for future occupiers.

REASON 3: Car-Free Agreement: The dismissal was also attributed to the absence of a car-free agreement.

5.3. Reference Number: 183164

Proposal: Lawful Development Certificate (Proposed) - Change of use from financial services (Class A2) to retail unit (Class A1)

Decision: Approved (With Informatives)

5.4. Reference Number: 640258

Proposal: Single-storey and two-storey rear extension

Decision: Approved (With Informatives)

5.5. Reference Number: 640256

Proposal: Single-storey and two-storey rear extension

Decision: Approved (With Conditions & Informatives)

5.6. Reference Number: 640254

Proposal: Change of use from residential to office on first floor

Decision: Approved (With Informatives)

5.7. Reference Number: 570399

Proposal: Lavatory extension

Decision: Approved (With Informatives)

B. Pre-Application

5.8. PRE_23_0459 PRE-APP: Construction of a single-story first-floor extension and the conversion of first-floor office space (Use Class E) above the NatWest Bank building into residential accommodation (Use Class C3) to create a 1 x 3-bedroom flat with a terrace. – advice given on 20th March 2024.

5.9. Summary of the advice: The applicant is advised that, while the scale of the upward extension appears acceptable from a heritage standpoint, detailed drawings are required to provide comprehensive advice on the design. Moreover, an open terrace in the proposed location is not supported, and the building line should be brought forward to represent a more coherent design. Officers therefore consider that a proposal mirroring the previously refused design, but one floor lower, to address concerns raised about scale and maintain design coherence, would be a better way forward from a design standpoint.

C. Enforcement:

5.10 No Enforcement Investigations or Notices

D. Adjacent Site: N/A

6. PUBLIC CONSULTATION

250029 – Non-Material Amendment

6.1. In accordance with Section 96A of the Town and Country Planning Act 1990 (as amended), applications for non-material amendments do not require public consultation. As such, no public consultation has been undertaken in relation to this application.

6.2. **242833- Minor Material Amendment** - In relation to Section 73, the Council circulated consultation letters to local residents on the date, as follows:

- Nos 1 – 15 & GF Flat 686 - 690 High Road Leytonstone, Leytonstone, London, E11 3AA
- Nos 9-16 & GF Flat 688 - 690 High Road Leytonstone, Leytonstone, London, E11 3AA
- The Birds Public House & Flat Above 692 High Road Leytonstone, Leytonstone, London, E11 3AA
- Nos 704 (Flats A,B,C,D) 700, 700a, 706, 706b, 706c, 698, 698a, 694, 694a, 696b, 696c (Flats 1-3), 696d, 825, 839 (First & Second Floor Flat), 841 - 843 (Flats 1 -9), 843a, 845 – 847, 849,851, 851a (Flar 1 & 2) 853 High Road Leytonstone, Leytonstone, London, E11 3AA
- Nos 1 -6, Clement House 696a High Road Leytonstone, Leytonstone, London, E11 3AJ (Clement House)
- (Crosby House) 2a Carlton Road, Leytonstone, London, E11 3AQ
- (Salisbury Club Apartments)13 Aylmer Road, Leytonstone, London, E11 3AD (Salisbury Club Apartments)
- (Carlton House) 14 Aylmer Road, Leytonstone, London, E11 3AD Carlton House

6.4 The application was advertised via a site notice on the **27th November 2024**.

6.5 As a result of the public consultation, the Council received a total of 13 individual objections and a petition signed by 12 local residents.

6.6 The representations relating to the issues of concern raised are detailed in the table below and are also matters which are addressed within the “Assessment” section of this report.

Objection	Officer Response
Loss of Privacy – Overlooking from the roof terrace into nearby homes and gardens.	The terrace would be enclosed by railings, and officers are satisfied that the occupiers of Flat 1 will not use adjacent flat roof areas. A condition could be added to clarify this.
Visual Impact – Disrupting the character of the area and impact on a Grade II listed building.	The impact on the adjacent Grade II listed terrace and the locally listed NatWest bank has been assessed and is considered acceptable. Under appeal reference APP/U5930/W/22/3311375, the Inspector found that a two-storey roof extension would result in <i>less than substantial harm</i> to the significance of

	the listed terrace at 694A–698A High Road. Since then, a single-storey extension above the building has been approved. The proposed terrace is located to the rear of the approved first floor structure, it is well enclosed, and not widely visible from public viewpoints. Given the Inspector's assessment of the larger scheme, the existing approval for a first-floor addition, and the modest nature of the current is considered to have minimal visual impact and is acceptable in both design and heritage terms.
Noise and Disturbance – Concerns about increased noise levels, particularly in the evenings.	The terrace would provide private amenity space for a 1-bedroom flat (2-person occupancy). Given the low residential occupancy, the development is unlikely to generate excessive noise. Any noise arising would be consistent with typical residential use and is unlikely to exceed ambient noise levels from the busy junction. Any instances of excessive noise would fall under the remit of Environmental Health regulations.
Safety Concerns – Risk of falling objects and unauthorized access.	The terrace would be set back approximately 2.5 metres from the edge of the ground floor extension below and will be enclosed by railings. As such, the risk of objects falling onto the street is minimal. The permission relates solely to the terrace as shown on the submitted plans and does not permit access over the remainder of the first-floor roof.
Conflict with Local Policies – Inconsistent with policies on privacy, heritage, and character.	Officers have assessed the proposal against relevant planning policies and determined that it is acceptable.
Impact on Listed Buildings – Detrimental effect on 694A, 696A, and 698A High Road.	The proposed terrace will not harm the significance of the adjacent listed buildings due to its discreet location, set back from the building edge and enclosed by low-level railings. It will not be visible in key views, including from the High Road/Kirkdale Road junction and Aylmer Road, and will have no impact on the character or setting of the heritage asset. Under appeal reference APP/U5930/W/22/3311375, the Inspector found that a two-storey roof extension would cause <i>less than substantial harm</i> to the significance of the adjacent listed terrace. A single-storey extension has since been approved.

	The current proposal is modest, well enclosed, and not readily visible from most public viewpoints. Given the previous acceptance of a larger scheme, the terrace would have a <i>negligible impact</i> on heritage significance and is considered acceptable in design and heritage terms.
Changes Not in Original Plans – Planning permission was granted without a terrace.	The previously approved planning permission did not include a terrace. This current application seeks a minor material amendment to that permission to incorporate a terrace, as now proposed in the revised plans.
Potential Precedent– Concerns that approval could set a precedent for more terraces.	The building is relatively unique in its form and context, making the inclusion of a terrace unlikely to set a precedent for similar developments in the area. Furthermore, each planning application is assessed on its own merits, and any future proposals for terraces would be subject to a full assessment in line with relevant planning policies and site-specific considerations.
Air Source Heat Pump Installed Without Permission	Following investigations, it has been confirmed that the air source heat pump is, in fact, the external unit of the air conditioning system. It is not connected to any operational equipment and has been in place for over six years.
Building Height Discrepancy – Concern that the flats have been built taller than approved.	Following a thorough investigation, it has been confirmed that the development has been constructed in accordance with the approved plans. The applicant's architect has measured the development and verified that it aligns with the approved height. Any concerns regarding potential discrepancies between the approved and built form would be addressed through planning enforcement procedures.
Impact on Views – Roof terrace affects outlook from surrounding properties.	The proposed roof terrace, measuring 10m², would be located in a discreet position and concealed by the first-floor extension. Consequently, it is unlikely to affect the outlook from surrounding properties or cause harm to the amenities of neighbouring occupiers.
Proximity to Living Room Windows – Terrace is a few meters away, reducing light and privacy.	The proposed terrace would be small and discreet, measuring 10m² (W 2.5m & H 4 m), and be enclosed by a privacy screen (with a height of 1.8m) on the side facing the closest neighbouring properties, preventing any potential overlooking. Given its scale and location within the first-floor extension, it is unlikely that the terrace would obstruct light or adversely affect the amenity of neighbouring occupiers.

Pressure on Parking – More residents may increase parking demand.	The previous planning permission, to which this amendment relates, was subject to a car-free development obligation, which will remain applicable under the new permission.
Terrace Overlooks a School – Potential privacy concerns for children.	No school was identified during the officer's site visit, and this was later confirmed by the applicant. Officers are therefore satisfied that the proposal would not impact any nearby school. In any case, given the terrace's small, enclosed nature and its location, it is highly unlikely to raise any concerns even if a school were present nearby.

7. OTHER CONSULTATIONS

Consultees	Response
Highways	No objection
Fire Brigade	No comment
Sustainability & Energy	No comment
Design & Conservation	The Conservation Officer considers that the proposed terrace would have no impact on the significance of the adjacent listed buildings, as it would be set back and largely screened from key public views, including those from the High Road and Aylmer Road.
Environmental Health	No comment
Thames Water	No comment
Natural England	No comment
Transport Planning	No comment
Waste Management	No comment

8. DEVELOPMENT PLAN

Section 96A – (Ref: 250029)

- 8.1. An application to make non-material amendments to a consented development is not an application for planning permission and, therefore, Section 38(6) of the Planning does not apply. As such, there is no requirement

to have regard to any adopted or otherwise approved development plan document in relation to land within the London Borough of Waltham Forest.

Section 73 – (Ref: 242833)

- 8.2. The NPPF Section 70(2) of the Town and Country Planning Act (1990) (as amended) sets out that in considering and determining applications for planning permission, the Local Planning Authority (LPA) must have regard to considerations including the provisions of the development plan and any local finance considerations, so far as material to the application, and any other material considerations.
- 8.3. Section 38(6) of the Planning and Compulsory Purchase Act (2004) makes it clear that “if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.
- 8.4. The Development Plan for the site, at the time of this report, comprises the London Plan (2021) and the Waltham Forest Local Plan LP1 (2024). The NPPF does not change the legal status of the Development Plan.

The London Plan (2021)

- 8.5. The London Plan is the overall strategic plan for London and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital from 2019 to 2041. The relevant policies within the London Plan (2021) relevant to this application are considered to include but not limited to:
- D1 – London’s form, character, and capacity for growth
 - D4 – Delivering good design
 - D6 – Housing quality and standards
 - D14 – Noise
 - HC1 – Heritage, conservation, and growth

Waltham Forest Local Plan LP1 (2024)

- 8.6. The draft version of the Local Plan underwent Regulation 18 public consultation between July 2019 and September 2019 and consultation on the proposed submission version between 26th October 2020 and 14th December 2020. It underwent examination and consultation on proposed modifications concluded on 21st September 2023. The Waltham Forest Local Plan (LP1) was subsequently adopted on 29th February 2024 and therefore now forms a key part of the development plan in determining all planning applications. The previous Core Strategy (2012) and Development Management Policies (2013) are superseded by LP1.
- 8.7. The relevant policies are:
- Policy 7 Encouraging Mixed Use Development
 - Policy 9 South Waltham Forest

- Policy 50 Noise, Vibration and Light Pollution
- Policy 53 Delivering High Quality Design
- Policy 57 Amenity
- Policy 70 Designated Heritage Assets
- Policy 71 Listed Buildings
- Policy 74 Non-Designated Heritage Assets
- Policy 75 Locally Listed Heritage Assets

9. MATERIAL PLANNING CONSIDERATION

Section 96A – (Ref: 250029)

Key Legislation - Section 96A of the Town and Country Planning Act 1990 (as amended)

- 9.1. ('Section 96A') allows the LPA to make non-material changes to a planning permission. The legislation includes the power to impose new conditions and to remove or alter existing conditions of a planning permission. The power may be exercised only on an application made by or on behalf of a person with an interest in the land to which the planning permission relates.
- 9.2. Subsection (2) of the S96A legislation states: "In deciding whether a change is material, the LPA must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted".
- 9.3. In order for the LPA to grant an application for a non-material amendment it must be satisfied that the amendment sought is non-material. The National Planning Practice Guidance clarifies that there is no statutory definition of 'non-material' given that a judgment on materiality will be dependent on the context of the overall scheme which differs from one scenario to the next. Since there is no formal definition of materiality, the LPA must consider the nature of the change being proposed, together with any previous non-material changes made to the consent originally granted.
- 9.4. The original planning permission (Ref: 240869), granted on 08/08/2024, has not been previously amended. A Section 73 application for a Minor Material Amendment (Ref: 242833) is currently pending consideration under this application.

Section 73 – (Ref: 242833)

National Planning Policy Framework (2024)

- 9.5. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It is a material consideration in planning decisions. It contains a presumption in favour of sustainable development, described as at the heart of the framework.
- 9.6. For decision-taking the NPPF states that the presumption means "approving development proposals that accord with an up-to-date development plan without delay" and where there are no relevant development plan policies, or

the policies which are most important for determining the application are out of date, granting permission unless "...any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination".

- 9.7. The NPPF gives a centrality to design policies; homes should be locally led, well-designed, and of a consistent and high-quality standard. Local planning authorities (LPAs) are to make sure that the quality of approved developments does not materially diminish 'between permission and completion, as a result of changes being made to the permitted schemes.
- 9.8. The specific policy areas of the NPPF considered to be most relevant to this application:
- Achieve well-designed places
 - Conserving and enhancing the natural environment
 - Conserving and enhancing the historic environment

Local Finance Considerations

- 9.9. Local Finance Considerations can include either a grant that has been or would be given to the Council from central government or money that the council has received or will or could receive in terms of CIL. It is noted that:
- It is not thought that there are any grants which have been or will or could be received from central government in relation to this development.
 - The Council does not expect to receive income from LBWF CIL in relation to this development.
 - The Council does not expect to receive income from Mayoral CIL in relation to this development.

Department for Communities and Local Government Technical Housing Standards – Nationally Described Space Standard (2015)

- 9.10. This standard deals with internal space within new dwellings and is suitable for an application across all tenures. It sets out requirements for the Gross Internal (floor) Area of new dwellings at a defined level of occupancy as well as floor areas and dimensions for key parts of the home, notably bedrooms, storage and floor to ceiling height.

10. ASSESSMENT

- 10.1. The main issues for consideration, in relation to the proposed development are as follows:
- (A) Section 96A

- (B) Section 73
- (C) Impact on Heritage & the street scene
- (D) Impact on the Living Conditions of Future Occupiers
- (E) Impact on the Living Conditions of Existing Occupiers

A. Section 96A – Non-Material Amendment application (Ref: 250029)

- 10.2. The proposed amendment has been assessed in relation to material alterations to the approved scheme. It solely seeks to modify the description of development by adding reference to a terrace, with no internal or external alterations or extensions proposed as part of this application.
- 10.3. The proposed alteration must be read alongside the Section 73 – Minor Material Amendment application (Ref: 242833), determine on this agenda . Although the two applications are interdependent, their assessment should be considered together.
- 10.4. The proposed amendment under this application has been reviewed against the following criteria to determine its acceptability:
- **Would the changes result in the development becoming contrary to local or national planning policies?**
No. The application solely seeks to modify the description of development. No physical works or development are proposed under this application.
 - **Would the changes have an impact on any material planning considerations?**
No. There are no material alterations to the design of the development within this application. As such, the proposal does not result in any material changes to the approved scheme as it is restricted to just a change in the description
 - **Would the changes require consultation?**
No. The amendment relates solely to the description of development and does not involve any physical changes. Therefore, in accordance with Section 96A requirements, no consultation is necessary.
 - **Would the amendment conflict with any planning conditions?**
No. The proposed change does not conflict with any existing planning conditions.
 - **Would the changes give rise to new planning issues or material considerations not previously assessed?**
No. The amendment involves a modification to the description of development only, with no physical works considered under this application.
 - **Would the changes alter the nature or description of the development?**
Yes. The applicant seeks to add a terrace under a separate Section 73 – Minor Material Amendment application (Ref: **242833**) to provide amenity space for future occupiers. However, in accordance with the Court of

Appeal judgment in *Finney v Welsh Ministers* (2019), it is no longer lawful for Local Planning Authorities (LPAs) to amend the description of development under Section 73. LPAs may only amend, remove, or add conditions under this provision.

Given this legal precedent, where a developer seeks changes under Section 73 that require an amendment to the description of development, it is advised that a corresponding request be made under Section 96A. In this instance, the amendment to the description is considered **non-material**.

B. Section 73 – (Ref: 242833)

- 10.5. Planning Practice Guidance states that new issues may arise after planning permission has been granted, which require modification of the approved proposals. [Paragraph: 001 Reference ID: 17a-001-20140306].
- 10.6. Planning permission ref: 240869, dated 08/08/2024, granted approval for the redevelopment of the site at 694 High Road, Leytonstone. The approved scheme involved the construction of a roof extension to facilitate the extension of the first-floor level to provide two self-contained residential units (1 x 1-bedroom and 1 x 2-bedroom, Use Class C3), with retention of the existing commercial ground floor unit (Use Class E).
- 10.7. The permission has been implemented and the development is now in the final stages of completion. As built, the development comprises Flat 1 (1-bedroom, suitable for 2 occupants) and Flat 2 (2-bedroom, suitable for 3 occupants).
- 10.8. The applicant now seeks a minor material amendment under Section 73 of the Town and Country Planning Act 1990 to vary Condition 2 (Approved Plans) attached to the original permission to include a terrace to the approved layout of Flat 1.
- 10.9. Planning Practice Guidance advises that there is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development that is not substantially different from the one which has been approved. [Paragraph: 017 Reference ID: 17a-017-20140306]
- 10.10. Case law (*R v Coventry City Council, ex p. Arrowcroft Group plc* [2001] PLCR 7) establishes that a local planning authority may impose new or varied conditions through a Section 73 application, provided that doing so does not result in a fundamental alteration of the originally approved development.
- 10.11. Where an application under section 73 is granted, the effect is the issue of new planning permission, sitting alongside the original permission, which remains intact and unamended [Paragraph: 015 Reference ID: 17a-015 20140306].
- 10.12. Given that the two flats have already been consented and implemented, this amendment solely relates to the proposed addition of a terrace and a door.

The key considerations are its potential impacts on designated heritage assets in the surrounding area, as well as the amenities of future and existing occupiers.

- 10.13. This application should also be read alongside the associated application seeking to amend the description of development under application ref: 250029 also on this agenda.

C. Impact on Heritage & the street scene

- 10.14. Section 66 of the Planning (Listed building & Conservation Areas) Act 1990 requires LPAs to have special regard to the desirability of preserving listed buildings or their settings.

- 10.15. Paragraph 212 - 217 (Conserving and Enhancing the Historic Environment) of the NPPF (2023) states that the impact of a planning application on the significance of a designated/non-designated heritage asset should be considered when determining the application. In evaluating such applications, a balanced judgement is required, taking into account the extent of any harm or loss and the significance of the heritage asset.

- 10.16. Paragraph 213 specifically state that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

(a) Grade II listed buildings, or Grade II registered parks or gardens, should be exceptional.

(b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.

- 10.17. Paragraph 214 states that where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

(a) the nature of the heritage asset prevents all reasonable uses of the site; and

(b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and

(c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and

(d) the harm or loss is outweighed by the benefit of bringing the site back into use.

- 10.18. Paragraph 215 stated that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 10.19. Paragraph 216 stated that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 10.20. Paragraph 217 stated that Local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.
- 10.21. Policy 74 A (Non-Designated Heritage Assets) states that non-designated heritage assets (including Locally Listed Heritage Assets - see Policy 75 'Locally Listed Heritage Assets') and their settings will be protected and conserved appropriate to their significance, with a strong presumption in favour of their retention, and where possible their enhancement; and B. Substantial harm to and complete loss of non-designated heritage assets will only be supported in exceptional circumstances, and will require clear and convincing justification and evidence as to why the non-designated heritage asset cannot be retained or repurposed.
- 10.22. Policy 75 aims to protect locally listed heritage assets and their settings due to their local significance. Substantial harm or loss will only be permitted in exceptional cases with strong justification. Alterations and extensions must be high-quality designs that respect the asset and its setting. All parks and public gardens will be retained, with development only supported if ancillary to their open space use and respectful of their character, requiring a balanced assessment of harm versus the asset's significance.
- 10.23. Policy 70 (Designated Heritage Assets) of the Waltham Forest Local Plan LP1 (2024) focuses on the protection and conservation of heritage assets and gives a great weight in the planning process to any harm to designated heritage assets. Furthermore, development proposals that lead to either substantial harm to, or the total loss of, designated heritage assets or their settings unless it can be demonstrated that the proposal achieves substantial public benefits that outweigh that harm or loss.
- 10.24. Policy HC1 (Heritage Conservation and Growth) of the London Plan (2021), emphasis on the protection and conservation of heritage assets. These policies advise that substantial harm to, or complete loss of, a heritage asset will only be supported in exceptional circumstances. Such cases will require clear and convincing justification and evidence as to why the non-designated heritage asset cannot be retained or repurposed.

- 10.25. The application proposes the addition of a terrace measuring 10m², located at first-floor level and fronting Aylmer Road. The terrace would serve the consented first-floor flat approved under application ref: 240869, dated 08/08/2024. It would be set back approximately 2.5 metres above the lower ground level of the building as it fronts Aylmer Road. The proposed terrace would incorporate a simple metal railing balustrade and a privacy screen with a height of 1.8 m on the side boundary with neighbouring properties at 694A, 696A, and 698A High Road. to safeguard residential amenity.
- 10.26. Since the previous permission was granted under application ref: 240869, dated 08/08/2024, the site has been added to the Local List as a locally listed building. The designation recognises its accomplished classical architectural style and strong presence in the streetscape, expressed through features such as fluted columns, pitched pediments, an overhanging cornice, and a stone balustrade. Opposite the site of High Road Leytonstone stands another former bank building of similar classical design, and together the two buildings form a visually cohesive group within the street scene.
- 10.27. To the rear of the site are Nos. 694A, 696A, and 698A High Road, which comprise a group of Grade II listed Georgian terraces featuring mansard roofs with attic accommodation and basements. The statutory listing highlights the significance of the roofscape as a key heritage feature. It is noted, however, that since their designation, the roofscape has been altered through the addition of dormer extensions.
- 10.28. Under appeal reference APP/U5930/W/22/3311375, the Inspector concluded that a two-storey roof extension would cause less than substantial harm to the significance of the listed terrace at 694A–698A High Road. The concern related to the added height obscuring views of the terrace's distinctive roofscape from the junction of Kirkdale Road and High Road, thereby reducing its visibility and architectural legibility. Since then, a single-storey extension has been approved. The proposed terrace is not considered to result in any harm to the significance of the locally listed building, the former bank opposite, or the Grade II listed terraces to the rear. Due to its modest size, set-back position, and use of a simple waist-height metal railing, the terrace would not be visible in key views from the High Road/Kirkdale Road junction, and would have limited visibility from Aylmer Road. Even if partially visible, it would not detract from the architectural or historic interest of the adjacent heritage assets. These views have been confirmed and agreed by the Conservation Officer, who considers that the proposal would not result in any impact to the setting or significance of nearby listed buildings.
- 10.29. In light of the above, the revised proposal would not harm the heritage assets nearby. The proposed development would have an acceptable effect on the existing building, the character and appearance of the area and the wider locality. Therefore, it would accord with Policies Policies 8,53,55,70 and 74 of the Waltham Forest Local Plan LP1 (2024) and HC1,D1,D4 of the London Plan (2021) and the NPPF.

D. Impact on the Living Conditions of Future Occupiers

- 10.30. Policy D6 (Housing Quality and Standards) of the London Plan (2021), along with Policy 56 (Residential Space Standards) of the Waltham Forest Local Plan LP1 (2024) requires that new development proposals meet the specified minimum internal and external space standards. Additionally, these policies require adherence to qualitative standards for privacy, outlook, and daylight. The Technical Housing Standards - nationally described space standard (2015) and Standard 24 of the Mayor's Housing SPG (2016) provide the benchmarks against which new residential developments are assessed.
- 10.31. In terms of amenity space, Policy D6 of the London Plan (2021), states that where there are no higher local standards in the borough Development Plan Document, a minimum of 5 sqm of private outdoor space should be provided for 1-2 person dwellings. However, Policy 56 of the Waltham Forest Local Plan LP1 (2024) requires at least 10 sqm of external amenity space per dwelling, plus an additional 1 sqm for each additional occupant. This higher local standard takes precedence over Policy D6. Furthermore, private outdoor spaces, such as balconies, terraces, or gardens, must be well designed and usable with a minimum area of 5 sqm and a depth of at least 1.5m.
- 10.32. The previous planning application (ref. 240869) was refused by Members, in part due to the lack of private amenity space. However, this reason was overturned on appeal (APP/U5930/W/22/3311375), with the Inspector concluding that the site is in a well-served area with access to nearby public amenity spaces, and therefore the absence of private provision was acceptable in that context.
- 10.33. The applicant has now submitted a revised proposal which includes dedicated private amenity space, addressing the original concern.
- 10.34. This minor amendment to the already consented 1-bedroom flat would include a private terrace with an area of 10 square metres and the replacement of a window with a door. This addition is designed to comply fully with local planning standards. The provision of this private amenity space will significantly improve the living conditions for future occupants and address the current lack of private outdoor space in a town centre location. As such, while it was not deemed necessary by the Planning Inspector, it nevertheless represents an enhancement to the existing approved dwelling, and it should be supported in line with Local and National Policies.

E. Impact on the Living Conditions of Existing Occupiers

- 10.35. Policy D6 (Housing Quality and Standards) of the London Plan (2021), along with Policy 57 (Amenity) of the Waltham Forest Local Plan LP1 (2024) requires that new home proposals respect the amenity of existing and future occupiers, neighbours and the surrounding area by avoiding harmful impacts from overlooking, enclosure and/or the loss of privacy, outlook and daylight/sunlight and noise disturbance to adjacent residential properties.

- 10.36. During the course of this application, a number of residents have raised concerns regarding various aspects of the proposal. These include the potential loss of privacy resulting from overlooking from the proposed roof terrace into neighbouring homes and gardens, as well as concerns about increased noise and disturbance, particularly during the evening. Residents have also expressed concern about the proximity of the terrace to nearby living room windows, which they feel may reduce natural light, and its overall impact on their outlook.
- 10.37. In response, it is noted that the proposed terrace is modest in scale, measuring approximately 10m², and would serve a one-bedroom flat with a maximum occupancy of two people. The site is situated along a busy town centre road, where a greater degree of background noise and overlooking is already present and expected as part of the urban context.
- 10.38. The terrace would be located to the rear of the property, facing Aylmer Road. It would be set back approximately 2.5 metres from the edge of the building, with an approximate distance of 12 metres to the nearest rear-facing habitable room windows of the neighbouring property. To mitigate the potential for overlooking, 1.8-metre-high privacy screens are proposed on either side of the terrace.
- 10.39. Considering the urban setting, the modest size of the terrace, the separation distance to neighbouring windows, and the inclusion of privacy screens, the proposal is not considered to result in undue harm to the privacy or amenity of neighbouring occupiers.
- 10.40. In light of the above, it is considered that the proposed development would not harm the amenity of neighbouring occupiers in terms of loss of daylight or sunlight and outlook or privacy. As such the development complies with Policies D6 (Housing Quality and Standards) of the London Plan (2021), along with Policy 57 (Amenity) of the Waltham Forest Local Plan LP1 (2024).

11. CONCLUSION

Section 96A (Ref: 250029)

- 11.1. The amendment involves the addition of the word "terrace" to the description of development. This change is minor and does not materially alter the nature, scope, or impacts of the approved scheme.
- 11.2. It is therefore concluded that the Section 96A application is acceptable and should be approved as a non-material amendment.

Section 73 (Ref: 242833)

- 11.3. The proposed amendments are modest in scope, maintain the design quality of the approved development, and do not result in any unacceptable impact on the heritage assets or neighbouring properties.

- 11.4. It is therefore concluded that the Section 73 application is acceptable, and planning permission should be granted subject to the re-imposition of all relevant conditions from the original permission, as varied where necessary.

12. ADDITIONAL CONSIDERATIONS

Public Sector Equality Duty

- 12.1 In making your decision you must have regard to the public sector equality duty (PSED) under S149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

- The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149 is only one factor that needs to be considered and may be balance against other relevant factors.
- It is not considered that the recommendation to grant permission in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights:

- 12.2 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as the London Borough of Waltham Forest to act in a manner that is incompatible with the European Convention on Human Rights.
- 12.3 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is

also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

13. RECOMMENDATION

Section 96A – (Ref: 250029).

- 13.1. The Planning Committee is recommended to GRANT planning permission for application 250029, under Section 96A of the Town and Country Planning Act 1990, subject to informatives.

Section 73 – (Ref: 242833).

- 13.2. The Planning Committee is recommended to GRANT planning permission for application 242833, under Section 72 of the Town and Country Planning Act 1990, subject to conditions, informatives and the Section 106 in the original application planning permission reference 240869, granted on 08/08/2024, which automatically binds the current Section 73 application to the original permission.

14. CONDITIONS

14.1 **Section 96A – Non-Material Amendment application (Ref: 250029).**

1. This approval relates only to the amendment of the development description. The original description:

"Re-development of the site at 694 High Road Leytonstone involving the construction of a roof extension to facilitate the extension of the first floor level comprising two self-contained flats (1 x 1-bed and 1 x 2-bed) (Use Class C3) and retention of the existing ground floor and commercial space (Use Class E)"

has been replaced with the following updated description:

"Re-development of the site at 694 High Road Leytonstone involving the construction of a roof extension to facilitate the extension of the first floor level comprising two self-contained flats with roof terrace to 1 unit (1 x 1-bed and 1 x 2-bed) (Use Class C3) and retention of the existing ground floor and commercial space (Use Class E)."

Informatives

1. This approval does not extend to any other matter referred to in correspondence or shown on any other plans. All of the conditions that form part of planning ref: reference **240869, granted on 08/08/2024** would still be applicable to the amendment approved. This decision is not a re-issue of the original decision, which still stands. The two documents should be read in conjunction together.
2. To assist applicants the Local Planning Authority has produced policies and provided written guidance, all of which is available on the Council's website,

and which have been followed in this instance. The Local Planning Authority delivered the decision in a timely manner.

3. The application was assessed based on the following information:

- Plans:
 - 23_697_221A_P2 - Existing and Approved (dated March 2024)
 - 23_697-220A-P2 – Existing and Approved (dated March 2024)
 - 23_697-222A-P1 – Proposed and Existing Street Scenes (dated March 2024)
 - 23_697-224-P1 – Existing Floor Plans (dated March 2024)
 - 23_697-221-P6 – Proposed and Existing Plans and Elevations Coloured (dated March 2024)
 - 23_697-220-P3– Existing and Proposed (dated March 2024)
 - 23_697-222-P3– Existing and Proposed (dated March 2024)
- Documents: Cover Letter dated (7th January 2025)

14.2 **Section 73 – Minor Material Amendment application (Ref: 242833).**

Time Limit:

1. The development hereby permitted shall begin no later than the expiration of three years from the date of planning permission reference 240869 granted 08/08/2024.
2. The development hereby permitted shall be carried out in accordance with the approved plans and thereafter maintained as such for the lifetime of the development:

- **23_697-224-P1** – Existing Floor Plans A3 (Existing Floor Plans) (dated March 2024)
- **23_697-220-P2** – Proposed and Existing Site Plans (Existing & Approved) (dated March 2024)
- **23_697-220-P3** – Proposed and Existing Site Plans (Existing & Proposed) (dated March 2024)
- **23_697-221-P2** – Proposed and Existing Plans and Elevations Coloured (Existing & Approved) (dated March 2024)
- **23_697-221-P5** – Proposed and Existing Plans and Elevations (Existing & Proposed) (dated March 2024)
- **23_697-221-P6** – Proposed and Existing Plans and Elevations Coloured (Existing & Proposed outlined in red) (dated March 2024)
- **23_697-222-P1** – Proposed and Existing Street Scenes A1 (Existing & Approved) (dated March 2024)
- **23_697-222-P2** – Proposed and Existing Street Scenes P2 (Existing & Proposed) **23_697-222-P3** – Proposed and Existing Street Scenes A1 (Existing & Proposed outlined in red) (dated March 2024)

Documents:

- Design and access statement: V2. (dated 1st MAR 2024)
 - Energy Performance & Sustainability Group Ltd (dated 10th May 2024)
 - Heritage Statement (dated March 2024), Vertical Bike Rack (undated)
3. Development works shall be implemented in accordance with the details of the Materials approved under application reference 242001, dated 03-10-2024.
 4. The cycle and refuse/recycling arrangements shall be constructed in accordance with Proposed and existing Sections 223 P2 (dated 20 June 2024) and Proposed plans and elevations 221 Rev P2 (dated 20 June 2024) unless otherwise agreed in writing by the Local Planning Authority and shall thereafter be retained as such for the lifetime of the development.
 5. Development works shall be implemented in accordance with the details of the Detailed Construction Logistics Plan approved under application reference 242606, dated 05-11-2024.
 6. Development works shall be implemented in accordance with the details of the Arboricultural Impact Assessment and Method Statement approved under application reference 242001, dated 03-10-2024.
 7. Development works shall be implemented in accordance with the details of the Green Roof approved under application reference 242001, dated 03-10-2024.
 8. Prior to the occupation of any part of the development hereby permitted, an Energy Statement demonstrating how the scheme reduces the carbon dioxide emissions of the development by at least 35% compared to the 2013 Building Regulations shall be submitted to and approved in writing by the Local Planning Authority. The report shall explain what measures have been implemented in the construction of the development. The development and energy efficiency measures documented and approved shall be retained for the lifetime of the development.
 9. Development works shall be implemented in accordance with the details of the Water Reduction Measure approved under application reference 242102, dated 17-10-2024
 10. Sustainable Construction: No NRMM shall be used on the site unless it is compliant with the NRMM Low Emission Zone requirements (or any superseding requirements) and until it has been registered for use on the site on the NRMM register (or any superseding register).

For the following reasons:

1. To comply with the provisions of section 91(1)(a) of The Town and Country Planning Act 1990 (as amended).
2. For the avoidance of doubt and in the interests of proper planning.

3. To safeguard and enhance the visual amenities of the locality, in accordance with Policy 53 and Policy 57 of the adopted Waltham Forest Local Plan LP1 (2024).
4. In the interest of security and sustainable development, in compliance with Policy T5 (Cycling) of the London Plan (2021) and 93 of the adopted Waltham Forest Local Plan Part 1 (2024).
5. To ensure that disruption is kept to a minimum and does not affect highway traffic flows to comply with Policies 50, 57, 63, 65, 87 and 89 of the adopted Waltham Forest Local Plan LP1 (2024).
6. To ensure the well-being of the trees in the interest of biodiversity and visual amenity, in accordance with Policy G7 C (Trees and Woodlands) of the London Plan (2021) and Policy 88 A & B (Trees) of the adopted Waltham Forest Local Plan LP1 (2024).
7. To ensure a satisfactory appearance and in the interest of local amenity and biodiversity in accordance with Policy G5 A (Urban Greening) of the London Plan (2021) and Policy 77 C (Green Infrastructure and the Natural Environment) of the adopted Waltham Forest Local Plan Part 1 (2024).
8. To ensure the development is sustainable and to comply with Policies 85 and 87 of the adopted Waltham Forest Local Plan LP1 (2024).
9. To minimise the water use of the development, in accordance with the requirements of Policy SI5 of the London Plan (2021) and Policy 89 of adopted Waltham Forest Local Plan LP1 (2024).
10. To ensure that air quality is not adversely affected by the development in line with the Mayor's SPG: The Control of Dust and Emissions during Construction and Demolition, to comply with Policy SI1 of the London Plan (2021).

Informatives

1. The previous planning permission reference 240869 granted 08/08/2024. was subject to a Section 106 Agreement and the current application remains bound by this legal agreement, which includes a clause permitting amendments under Section 73 of the Town and Country Planning Act 1990.
2. **IMPORTANT:** Compliance With Planning Conditions Requiring Submission and Approval of Details Before Development Commences You will be in breach of planning permission if you start development without complying with a condition requiring you to do something before you start. For example, that a scheme or details of the development must first be approved by the Local Planning Authority. Carrying out works in breach of such a condition will not satisfy the requirement to commence the development within the time permitted. Beginning development in breach of a planning condition will invalidate your planning permission. If you require confirmation as to whether

the works you have carried out are acceptable, then you should apply to the Local Planning Authority for a Certificate of Lawfulness.

3. Construction and demolition works audible beyond the boundary of the site should only be carried out between the hours of 0800 and 1800 hours Mondays to Fridays and 0800 and 1300 hours on Saturdays, and not at all on Sundays or Public/Bank Holidays.

15. BACKGROUND DOCUMENTS

15.1 Appeal decision – 213834 dated 28th June 2023



The Planning Inspectorate

Appeal Decision

Site visit made on 9 June 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th June 2023

Appeal Ref: APP/U5930/W/22/3311375
694 High Road, Leytonstone E11 3AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Malde (Zoo Property Holdings Limited) against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 213834, dated 3 December 2021, was refused by notice dated 21 July 2022.
 - The development proposed is construction of roof extension to create additional two floors to provide 4 self-contained residential units comprised of (4 x 2-bedrooms) (Use Class C3).
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr A Malde (Zoo Property Holdings Limited) against the Council of the London Borough of Waltham Forest. This is the subject of a separate decision.

Preliminary Matters

3. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered from that on the planning application form. The description on the application form states that 5 apartments are proposed whereas 4 residential units are stated on both the appeal form and the Council's decision. The proposed plans before me show 4 units. Accordingly, in the description in the banner heading above, I have taken the wording from the appeal form and the Council's decision.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the character and appearance of the area and the setting of the Grade II listed properties 694A, 696A and 698A High Road;
 - Whether appropriate living conditions would be provided for future occupiers with particular regard to their access to outdoor amenity space; and
 - Whether or not planning obligations are necessary to make the development acceptable and, if so, whether or not any necessary agreements have been entered into.
-

Reasons*Character and appearance and the listed buildings*

5. No 694 High Road is a traditionally designed property with accommodation across two floors. The appeal site is within an area of mixed character where there are many commercial properties but also residential properties. The immediate surrounds to the site exhibit a dense built form. There is variation to the design and scale of buildings on High Road but many are traditionally designed and 3 storeys in height. Brick, stone and render building materials are all well represented.
6. Adjacent to the appeal site is a short row of terraced properties containing the Grade II listed properties 694A, 696A and 698A High Road. Containing more floors of accommodation than the host property and incorporating pitched roofs, the terraced properties are taller than the host property. The listed terraced properties exhibit some distinguishing and traditional design features such as porticos, sash windows and stucco bands and dressings together with distinctively shaped pitched roofs. These distinguishing and traditional design features contribute to their significance. In the past Nos 694A, 696A and 698A were served by more expansive front and rear gardens and thereby would have had a spaciousness to their surrounds. As the surrounding area has become more built-up, over the passage of time, the listed properties have become more concealed than they once were. The distances at which the listed properties can now be appreciated will, I accept, be diminished in comparison to the past. Nevertheless, where views of the listed properties remain, and given in these views their appearance can be appreciated, I find that the visual setting of these properties contributes meaningfully to their significance.
7. In the proposed development, the height of the host property would increase substantially. In views from Kirkdale Road and, around its meeting point with High Road, this added height would conceal views of the distinctive roofscape of the listed terrace. Therefore, in these views, the extent to which the listed terrace would be noticeable and, the appearance of its uppermost sections appreciated, would be eroded. In such views and largely due to the presence of the host property to their front, I accept that a view of the entirety of the terrace is not available at present and also that not all of the terrace would be obscured in the proposal. I also acknowledge that the dormer windows, which account for a part of the roofscape of the terrace are not an original feature. Nevertheless, and in such views, the proposal would further conceal and reduce the legibility of the listed properties.
8. The design of the proposal would incorporate stepped changes in height with the higher sections set away from the listed properties. Given this, and the built-up nature of the surrounds to the listed properties, I acknowledge that in other views such concealment would not take place such as from Aylmer Road.
9. However, as the proposed development would in some views detract from how readily the listed properties can be appreciated, a harmful effect upon their setting would result. The appellant submits that the proposal would enhance the significance of the listed terrace by the creation of a clear separation from the commercial High Road and strengthening of the prevailing residential use of the listed terrace. I acknowledge that a greater concentration of residential properties would result from the proposal and its design would step up and away from the frontage of the terrace. However, I find that any positive effects

derived from this to be very limited and would not offset the harmful effects of concealing the terrace further in some views.

10. The proposal would, therefore, fail to preserve the setting of the listed properties. The harm to the significance of the designated heritage asset would be, in the words of the National Planning Policy Framework (the Framework), less than substantial.
11. Although I have found that the harm would be less than substantial, such harm is, nevertheless, a matter of considerable importance and weight in my determination. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty upon me to pay special regard to the desirability of preserving the listed terrace or its setting or any features of special architectural or historic interest which it possesses. Furthermore, and despite it being put to me that the listed properties are of limited significance and the subject of some unsympathetic alterations in the past, the Framework sets out that great weight should be given to the conservation of designated heritage assets.
12. Opposite the site on both High Road and Aylmer Road are 3 storey properties. Therefore, although in the proposal No 694 would increase in height substantially, it would remain comparable with some of the neighbouring properties and, more widely, many others in this area. The 2 storey extension proposed would be set back from the front elevation of the existing property and its distinctive first floor balustrade. The proposed extension would incorporate features such as detailing around the windows which would be very reflective of the existing property together with the use of matching materials.
13. To one side of the host property there are further properties which are not 3 storey and, despite the number of 3 storey properties in the area, this forms a group of lower properties in this particular part of the High Street. Given this and, given that the host property's relatively low height permits the views of the listed buildings to its rear, I do not find that, as has been put to me, its present scale detracts from the character or appearance of the area nor that the quality of the townscape as a whole would be improved by heightening the building.
14. Even so, given my findings above, the proposed development would be of a design, form and height that would be in keeping with the character and appearance of the area in general terms. Nevertheless, for the above reasons, there would be less than substantial harm to the listed terrace.
15. In coming to this view, I acknowledge that Council Officers recommended approval of the proposed development. I also note that the proposed development has evolved over time, being the subject of pre-application engagement. It may be that, as a result of that process, a number of design improvements to it may have been made. Nevertheless, for the above reasons the current iteration would still result in harm.
16. Consequently, the proposal would be contrary to Policies CS2, CS12 and CS15 of the Waltham Forest Local Plan Core Strategy, March 2012 (CS) and, policies DM28 and DM29 of the Development Management Policies Local Plan, October 2013 (DMPLP). In summary, and amongst other matters, these policies promote the conservation and enhancement of heritage assets and their setting, require high quality design which responds to local context including its

historic significance and, seek development which makes a positive contribution to improving the urban environment.

17. The Council's first reason for refusal also cites Policy CS13 of the CS. I do not find conflict with this policy which seeks to promote health and well-being and, as a result, is largely irrelevant to the specific harm I have identified. Furthermore, the Council cite conflict with paragraphs 194 and 195 of the Framework. These particular paragraphs place requirements upon developers and local planning authorities to identify and assess the effects of proposed development upon heritage assets. Sufficient information has been submitted to enable this to be adequately undertaken and, therefore, I find no conflict with these paragraphs. Later in my decision I return to the Framework and its advice upon conserving and enhancing the historic environment.

Living conditions

18. While Policy D6 of the London Plan, March 2021 (LP) sets out minimum standards for private outdoor space, Policy DM7 of the DMPLP sets higher standards, and the LP indicates local standards should take precedence. Although Policy DM7 seeks to ensure that all homes, including flatted development, have access to an element of outdoor amenity space the justification to the policy sets out that a flexible approach will be taken having regard to the circumstances of the case.
19. Public open spaces are located a short distance from the appeal site. This includes Henry Reynolds Gardens which contains a range of equipment and facilities whilst further large expanses of parkland are located on neighbouring land. These would be readily accessible from the appeal site and would provide the future occupiers with an alternative to a private outdoor amenity space.
20. Together with alternative outdoor space options, and amongst other matters, the justification to Policy DM7, states that access to shops, public transport, public services and community facilities and, the constraints of the site are further factors to be considered when determining outdoor amenity space requirements.
21. Being situated on High Road, the likes of cafés, public houses and shops would all also be readily accessible to the future occupiers of the flats and thereby provide alternative forms of leisure within easy reach. Furthermore, given the proximity of Leytonstone Station and the bus stops on High Road itself, future occupiers of the development would be well served by public transport options enabling them a means to travel to further services and facilities.
22. The appeal site is also located within an area with a dense built form and where there already exist buildings which are not served by very spacious plots. Therefore, that in the proposal upper storey accommodation would be provided without dedicated outdoor space would not be at odds with the character of the area.
23. For these reasons appropriate living conditions would be provided for future occupiers of the proposed development with particular regard to their access to outdoor amenity space. In coming to this view, I acknowledge that the COVID-19 pandemic did place emphasis upon the availability of outdoor space. However, given my above findings and in particular the availability of public

open spaces in the area, I nevertheless find the proposals acceptable in this regard.

24. As such the development would accord with Policies DM7 and DM29 of the DMPLP, Policies CS2, CS13 and CS15 of the CS and Policy D6 of the LP. In summary, and amongst other matters, these policies seek to ensure developments of a high quality of design including through their provision of internal and external spaces. These policies also seek to ensure satisfactory living conditions for both future and surrounding occupiers. The Council's second reason for refusal also cites conflict with Policy CS12 of the CS and Policy DM28 of the DMPLP together with conflict with the advice at paragraphs 194 and 195 of the Framework. These policies and advice relate to the implications of development upon heritage assets and are not relevant to the findings I have made on this main issue.

Planning obligations

25. The application subject to the appeal was recommended for approval by Council Officers. That recommendation, which was overturned by Members of the Planning Committee, was subject to a schedule of conditions and a planning obligation under section 106 of the Town and Country Planning Act 1990 (as amended) (the Planning Act). Although the appellant has indicated a willingness to enter into the section 106 legal agreement, I do not have an agreement before me.
26. I particularly note that no vehicle parking spaces are proposed and that the development is proposed to be car-free. Amongst other matters Policy DM16 of the DMPLP encourages car-free development in locations that are highly accessible by public transport, are accessible to opportunities and services, and/or have high levels of parking stress. The appeal site is located within an area with such characteristics.
27. To deliver a car-free development a mechanism is required to ensure that occupiers of the development would not be eligible to apply for a parking permit within the controlled parking zone operating within the area, unless there was an exceptional reason such as they were a Blue Badge holder. Without ensuring the parking permit ineligibility, it has not been shown to me that the occupants of the development could not apply for parking permits with the consequential increases in demand for on-street parking that would result. Furthermore, in failing to constitute a car-free development, the proposal would not be minimising the need to travel by car as referenced within the justification to Policy DM16.
28. Therefore, and on the grounds of delivering a car-free development alone, I have no reason to conclude that a planning obligation under section 106 of the Planning Act is not necessary to make the development acceptable in planning terms. It would be required, amongst other matters, so that the development complied with Policy DM16, would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. Such an obligation would therefore accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out at paragraph 57 of the Framework.

Other Matters

29. The principle of the proposed development would be acceptable at the location whilst the site would also be located within an accessible location with, as I have already acknowledged, access to a range of services and facilities. The proposed flats may also exceed the minimum internal space standards and be dual aspect whilst I note that the Council did not conclude that the proposed development would harm the living conditions of neighbouring occupiers including in relation to their daylight and sunlight. However, the absence of harm in relation to these matters is a neutral factor and weighs neither for nor against the proposal.
30. The development may comply with building regulations, however, this is a separate regime to planning permission and as such is not a determinative factor in my decision.
31. The Council's second reason for refusal makes a reference to paragraph 203 of the Framework which provides advice in relation to development and non-designated heritage assets. However, the Council have not elaborated further upon this. Although in the first main issue I have identified harm to the setting of Nos 694A, 696A and 698A, I also concluded that the development would incorporate a design in keeping with the host property and the character of the area more generally. Given such circumstances, I have no firm basis on which to conclude that there would be any harm to a non-designated heritage asset or, in turn, conflict with paragraph 203 of the Framework.
32. Finally, I note that the Council have not submitted a Statement of Case but there is no obligation upon them to do so. As referenced elsewhere in this decision, the application for costs is the subject of a separate decision.

Conclusion

33. In the first main issue I have identified that less than substantial harm to the significance of the Grade II listed properties 694A, 696A and 698A High Road would result and that there would be conflict with policies within the development plan. The Framework confirms that great weight should be applied to the conservation of designated heritage assets. The Framework also sets out, at paragraph 202, that where a development proposal would lead to less than substantial harm to a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
34. The proposal would make use of brownfield land and utilise it more intensively so as to deliver more homes. In so doing, the proposed development would use airspace above existing premises as is referenced at paragraph 120 of the Framework. With 4 units provided the contribution to housing supply would be quite modest but nevertheless valuable and I attribute this moderate weight.
35. The appeal site is presently vacant and the proposed development would allow for re-occupancy which would make a contribution to the vitality of the area. The provision of a green roof and green wall system may provide some biodiversity gain whilst I also note that it is proposed to improve the energy efficiency of the host building. The proposal would provide for a dedicated bin store and, in so doing, may prevent bins being sited on the highway in an unsightly manner. These are each further modest benefits of the proposal.

36. Taken together and, given that the harm I have identified to the designated heritage assets is a matter of considerable importance and weight in my determination, the public benefits would be insufficient to outweigh the harm I have identified.
37. Furthermore, whilst I have identified in the second main issue that appropriate living conditions would be provided for future occupiers of the proposed development I have, in my final main issue, concluded that a planning obligation under section 106 of the Planning Act is necessary to make the development accord with the development plan and be acceptable in planning terms. No such section 106 agreement has been completed and, in its absence, the proposal is in conflict with the development plan.
38. Therefore, and although the proposed development would accord with various development plan policies, the development would conflict with the development plan as a whole. I have had regard to other considerations material to the appeal including the content of the Framework but conclude that there are no such considerations of sufficient weight to indicate a decision other than one in accordance with the development plan. The appeal is therefore dismissed.

H Jones

INSPECTOR