



Appeal Decision

Site visit made on 16 July 2019

by Christopher Butler BA (Hons) PG Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2019

Appeal Ref: APP/G5750/W/19/3226500

120A Dames Road, Forest Gate, London E7 0EB

- 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 Lowden Roofing Supplies Ltd against the decision of the Council of the London Borough of Newham.
 - The application Ref 18/02430/FUL, dated 20 August 2018, was refused by notice dated 11 October 2018.
 - The development proposed is for the installation of a rear fire exit door to existing storage enclosure.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of a rear fire exit door to existing storage enclosure at 120A Dames Road, Forest Gate, London E7 0EB in accordance with the terms of the application, Ref 18/02430/FUL, dated 20 August 2018 and the plans numbered 5790-P101 Rev A; 5790-P102 Rev A; 5790-P103 Rev A; 5790-P104, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. The Council adopted the Newham Local Plan 2018 on the 10 December 2018, formally withdrawing the London Borough of Newham Local Plan: Core Strategy (adopted January 2012) and Local Plan: Detailed Sites and Policies Development Plan Document (adopted 20 October 2016). As such the Development Plan consists of the London Plan - The Spatial Development Strategy for London Plan (March 2016) and the Newham Local Plan 2018 (adopted 10 December 2018). I shall consider the appeal on this basis.
3. The emerging Draft London Plan: The Spatial Development Strategy for Greater London (Draft for Consultation December 2017 with minor suggested changes July 2018) (DLP) has been subject to an Examination in Public and the panels report is currently awaited. As the DLP is at an advanced stage of preparation, I give it some weight. Regarding the policies in the DLP, the Council's refusal ground, as set out in their decision notice references both policies D11 (Fire Safety) and D13 (Noise). However, the ground of refusal only specifies potential increase in noise leakage from the storage enclosure and Policy D11 (Fire Safety) of the DLP is not relevant in the determination of this appeal.
4. The appellant has submitted a Noise Impact Assessment (NIA), dated December 2018, prepared for them by Syntegra Consulting (18-4897) with the appeal. As the Council notified interested parties of the appeal and had the

opportunity to comment on the NIA, I consider that no parties would be unfairly prejudiced by my consideration of the NIA in the determining of this appeal.

5. Since the NIA was written, the British Standard document BS4142:2014 (Methods for Rating and Assessing Industrial and Commercial Sound) has been withdrawn following its replacement by the British Standards Institutes (BSI) with BS4142:2014+A1:2019 (British Standard). The main parties had the opportunity to comment on this. I consider that no parties would be unfairly prejudiced by my consideration of the replacement British Standard.

Main Issue

6. The main issue is the effect of the development on the living conditions of neighbouring residential properties in Dames Road, Sidney Road and Knighton Road, particularly regarding noise and disturbance.

Reasons

Background

7. The appeal site is an irregularly shaped piece of land located to the rear of residential properties in Dames Road, Sidney Road and Knighton Road. Pedestrian and vehicular access to the site is achieved via an access located between numbers 118i and 120 Dames Road. Both the Council and the Appellant refer to the sites use as 'a builders yard' that has been in use for that purpose for a period in excess of 40 years.
8. To the north-western site boundary a storage building has been erected. This building was originally granted planning consent by the Council under planning reference 14/01536/FUL and subsequently amended by planning permission 17/03757/VARDWG, which was granted consent by the Council on 6 February 2018.
9. The walls of the storage building are constructed of breeze block and brick under a light-weight roof.
10. The application sought to regularise an opening that has already been formed within the north-west facing elevation of this storage building referred to as a "rear fire exit door".

The effect of the development on the living conditions of neighbouring residential properties, particularly regarding noise and disturbance.

11. The storage building, within which the fire door exit has been installed, contains building materials that generally would not be stored in the open as they would be likely to be susceptible to damage from weather. Two forklift trucks were in operation during my site visit and a large delivery truck was parked in the site just next to the access where it widens entering the yard. Although busy, the site was not particularly noisy. Work within the site was continuous during my site visit and when walking the residential streets surrounding the site, I did not hear any work activities or disturbance that emanated from the site. This includes reversing alarms, engines being run, shouting or general conversations.

12. The NIA was undertaken in accordance with BS4142:2014. I consider that the NIA provides sufficient quality and detail of information in the determination of this appeal. The results of the NIA identified that the existing door in the fire door opening is 'fairly lightweight', not properly sealed and offers very poor sound insulation. However, the NIA concludes that if the existing door were to be replaced with a door fit for purpose, being well sealed at the top, bottom and sides and acoustically rated to achieve an R_w of 35 dB¹, this would result in a noise reduction through the door below the typical background sound level LA90 (dB) and the measured ambient sound level as set out within the NIA. I have not been provided with any quantifiable evidence to the contrary.
13. Whilst I appreciate that my site visit was a snapshot in time, I heard no levels of noise, or witnessed any other adverse impact, that I would consider to be unacceptable, despite the yard being in operation. In the absence of any scientific or quantifiable evidence to the contrary, I consider that the rear fire door exit would not increase the potential for such a disturbance providing the door installed is fit for purpose. A condition can be used to secure this.
14. The purpose of the condition requiring the replacement of the fire door is to require the appellant to comply with a strict timetable for dealing with the submission of full details of a replacement fire door, that conforms with the mitigation proposed in the NIA at Part 8 – Conclusion, which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.
15. Additionally, in the interests of neighbouring amenity a condition would be required to ensure that the fire door is maintained in a closed position, except in the case of an emergency. Without such a condition the fire door has the potential to be left open resulting in the potential for noise disturbance.
16. Subject to the imposition of such conditions, I consider that the development would comply with: Policy 7.15 of The London Plan - The Spatial Development Strategy for London Plan (March 2016); Policies SP1, SP2 and SP8 of the Newham Local Plan 2018; and Policy D13 of the emerging Draft London Plan: The Spatial Development Strategy for Greater London (Draft for Consultation December 2017 with minor suggested changes July 2018).

Other Matters

17. I have noted the concerns raised from third parties, including those related to rights of way and land ownership. No specific evidence has been provided regarding these matters and in any event they fall outside the planning remit,

¹ Noise rating level of 35 decibels.

as other legal recourses exist for affected parties should they wish to pursue such matters. Irrespective of this, it is not for me to conclude in regard to rights of way and land ownership.

18. I also note concerns raised regarding security and prospective intensification and future uses of the building and yard. I have no detailed evidence before me in respect of these matters and I have determined the appeal as currently before me.

Conclusion

19. I consider that, subject to the imposition of appropriate conditions, as referred to above, the development accords with the Development Plan and the emerging Draft London Plan: The Spatial Development Strategy for Greater London (Draft for Consultation December 2017 with minor suggested changes July 2018).
20. I therefore conclude this appeal for the installation of a rear fire exit door to existing storage enclosure should be allowed and planning permission granted.

Christopher Butler

INSPECTOR

Schedule of Conditions

1. The rear fire door to existing storage enclosure hereby permitted shall be removed and the opening permanently closed up, using bricks that match the external elevation within which it has been installed, within 5 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 1 month of the date of this decision full details of a replacement fire door, that conforms with the mitigation proposed in the submitted Noise Impact Assessment (NIA) at Part 8 – Conclusion (i.e. the fire door to be installed is fit for purpose, well-sealed at the top, bottom and sides and acoustically rated to achieve a Rw of 35 dB) shall have been submitted for the written approval of the local planning authority and the details submitted shall include a timetable for its implementation.
 - ii) If within 4 months of the date of this decision the local planning authority refuse to approve the details submitted pursuant to this condition or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved details of the fire door and seals, as specified in this condition, the fire door and seals shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
2. The rear fire exit door, hereby permitted, shall remain closed at all times, except in the case of an emergency.