



Appeal Decision

Site visit made on 21 January 2020 by S Witherley

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2020

Appeal Ref: APP/U5360/W/19/3238312

159 Lower Clapton Road, Hackney, London, E5 8EQ

- 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 F Temur against the decision of the Council of the London Borough of Hackney.
- The application, Ref 2019/2822, dated 1 August 2019¹, was refused by notice 26 September 2019.
- The development proposed as described on the application form is:
Installation of external flue ducting to rear and terminating at roof level

Decision

1. The appeal is allowed and planning permission is granted for the installation of an external flue ducting to the rear and terminating at roof level at 159 Lower Clapton Road, Hackney, London, E5 8EQ, in accordance with the terms of the application, Ref 2019/2822, dated 1 August 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 159/B19-01, 159A/19-05, 159B/19-06, 159B/19-07, 159/B19-08, 159A/19-09, 159A/19-10, 159A/19-11.
 - 3) Noise arising from the use of the extractor fan or any associated equipment shall not increase the existing background noise level (LA90 15mins) when measured (LAeq 15mins) 1 metre external from the nearest residential or noise sensitive premises. Prior to the installation of the extractor fan and any associated equipment details of measures that will be incorporated into the design of the system to minimise the impact of vibration/ structure borne noise on nearby residential properties shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the details so approved and any mitigation measures agreed shall be retained for the lifetime of the development.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

¹ Date taken from appeal form and Council's decision notice.

Main Issue

3. The effect of the proposal on the character and appearance of the appeal property which is a locally listed building.

Reasons for the Recommendation

4. No. 159 fronts onto a busy mixed-use high street which contains both commercial and residential units of various ages, types and sizes. Both commercial and residential properties sit comfortably alongside one another with No. 159 being one of the larger more imposing buildings fronting the high street. It comprises of four storeys, including a basement, it has a brick with rendered mock Tudor facings to the front with the side and rear being predominantly brick. At basement and ground floor level is a café with additional floors of accommodation above, the use of these is unknown. To the rear is a small courtyard which is bounded by a tall brick wall. The rear elevation overlooks the flank wall of a residential Mansion block located to the south along Rowhill Road. It is one of a pair of semi-detached buildings known as the St Andrews Mansions, the pair of semi-detached buildings are locally listed, and are group referenced in the Council's local list as *St Andrews Mansions, 157 – 163 Lower Clapton Road, E5*. The significance of the building derives from the architectural merits depicted upon the front and side elevations and the overall scale and layout of the buildings.
5. The Council note that the property is located north of a group of buildings at Maitland Place which are Grade II Listed, however, they have not raised any concerns regarding the proposals impact on the setting of this group of Listed Buildings and have not mentioned them in the refusal reasons. Having regard to the proposal before me I would agree that there is no impact from the proposal on the setting of this group of Listed Buildings.
6. The proposal seeks to install an external flue to the rear which would terminate at roof level. The details indicate that the flue would be painted to match the existing brick work.
7. The rear of No. 159 is relatively plain and unassuming unlike the more architecturally interesting side and front facades. It has a number of service and ancillary additions associated with commercial use including a satellite dish, waste pipes, an existing ventilation system and a prominent metal utility box, which is visually unattractive and the use of which is unknown. Despite this, the original form, window layout and design of the building remains clearly legible from the rear, and much of the original fabric appears to remain intact.
8. Visibility of the rear elevation from the public realm is limited to areas from Rowhill Road however, as a result of the high boundary wall surrounding the small court yard and the limited distance between the rear elevation and the flank wall of the neighbouring Mansion block, these views are restricted and there is minimal opportunity for long and prolonged views of the rear elevation as a consequence. The rear elevation is also slightly obscured as a result of a mature tree that is located outside the boundary wall of the rear yard.
9. Whilst these structures can often appear unattractive and dominant particularly when located in prominent locations, for example, at the front or side of a building, they are not uncommon or as visually prominent when located at the rear, particularly in areas where there are a cohesive mix of commercial food outlets and residential. The Council note that a similar extraction flue located on the neighbouring Mansion building at No. 161 was granted planning permission prior to the adoption of the Development Management Local Plan 2015 and that it stands out as being an uncharacteristic feature and I would agree.

However, given that the proposal subject to this appeal would be placed at the rear and its siting ensures that it is set furthest away from the boundary closest to the highway the visual impact and its prominence upon the rear elevation would not have a significant harmful effect on the overall character and appearance of the property or surrounding area. As it is proposed to paint the extraction duct to match the existing tiles, these measures further reduce its visual impact. Accordingly, it would not appear visually prominent from the public realm and therefore would not result in any significant harm to the overall character and appearance of the appeal site nor would it detract from the significance or architectural merits of the locally listed building.

10. The Council have noted that the proposal would cut through the eaves of the building and this would result in damage which raise strong concerns. However, no evidence has been submitted as to specify what these concerns are. Nevertheless, given the nature of the proposal and without any demonstrable evidence to the contrary, it is considered unlikely that any irrevocable harm would be caused to the fabric of the building as a result of the installation of the extraction flue.
11. Third party comments were received regarding the location of the proposal and ownership of the site. However, any appeal decision is based upon the planning merits of a proposal and these private matters cannot be addressed via the appeal process.
12. Drawing all the above together, it is considered that the proposal would not be harmful to the character and appearance of the locally listed building and the significance of the locally listed building would be preserved. Accordingly, it accords with Policies 7.4, 7.6 and 7.8 of the London Plan 2015, Policies 24 and 25 of the Hackney Local Development Framework Core Strategy, Policies DM1 and DM28 of the Hackney Development Management Local Plan 2015.

Conditions

13. In addition to a condition specifying the time limit, I have imposed a condition specifying the relevant drawings as this provides certainty. The Council have suggested a condition which seeks to reduce noise arising from the extraction flue. It is considered reasonable and necessary to attach a condition to safeguard the living conditions of the occupiers of the neighbouring properties from potential noise impacts from its use and therefore the condition has been attached. However, a second element of the suggested condition also included measures to ensure vibration/structure borne noise derived from the use of the extractor fan did not cause noise nuisance within residential or noise sensitive premises. The concept of statutory nuisance is governed by Environmental Health legislation which is a separate regime to planning control. In order to meet the statutory tests for a planning condition any condition needs to be precise in order that the meaning is clear. In the absence of any suggested measurement or standard against which the requirement could be measured the wording is imprecise and is likely to leave the appellant unsure as to what it means. However, the appellant indicates that the design of the flue has been developed at the request of Environmental Health officers and does not expressly object to the principle of the condition. Consequently, I have reworded the requirement such that details of measures to be incorporated to minimise any disruption by way of vibration shall be submitted to and agreed in writing prior to the flue being installed, such that the parties have the opportunity to agree appropriate details in the interests of protecting the living conditions of neighbouring residents.

Conclusion

14. For the reasons given above and having had regard to all other matters raised, it is recommended that the appeal should be allowed.

S Witherley

APPEAL PLANNING OFFICER

Inspector's Decision

15. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis agree that the appeal should be allowed.

Chris Preston

INSPECTOR