



Appeal Decision

Site visit made on 31 January 2020

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 17 February 2020

Appeal Ref: APP/U5360/W/3240527

14 Brooke Road, Hackney, London N16 7LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mrs Fatema Mapara against the decision of the Council of the London Borough of Hackney ('LBH').
 - The application Ref 2019/0565, dated 13 February 2019, was refused by notice dated 12 September 2019.
 - The development proposed is described on the application form as 'change of use of existing ground floor flat (Class C3 use) to day care nursery (Class D1 use) and creation of a basement flat with front lightwell.'
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Decision

1. The appeal is dismissed.

Planning context

2. Each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. In this instance the development plan includes policies of the London Plan ('LP'), Hackney Core Strategy ('CS') and the Council's Development Management Plan ('DMP').¹ I have had regard to various other material considerations including the National Planning Policy Framework ('NPPF'), Planning Practice Guidance ('PPG'), and the Mayor's Housing Supplementary Planning Guidance ('SPG').²
3. The appellant contends that the Council have not taken appropriate account of their Residential Extensions and Alterations Supplementary Planning Document ('SPD').³ Section 4.4 of which sets out design principles related to the creation and alteration of basements. However SPD section 1.8 sets out that it applies to 'undertaking extensions and alterations to private dwellings'. Examples given relate to that context, for example section 4.4 bullet 7 refers to the creation of a 'habitable basement room' as opposed to a new dwelling. Although the guidance in the SPD is partially relevant, notably in respect of visual effects, it does not specifically address the creation of new basement flats.

Planning history

4. The Council's officer report related to the current scheme sets out that the proposal would, in conflict with LP policy 3.14 criterion B, result in the loss of a 'two-bedroom unit with the reprovision of a studio'. That element of policy

¹ Adopted in March 2016, November 2010, and July 2015 respectively, with the current version of the NPPF having been published in February 2019 and noting the recent examination of a new iteration of the London Plan.

² The SPD published in March 2016.

³ Approved 29 April 2009.

seeks to avoid net loss of housing provision as a result of development, unless replacement provision is of 'at least equivalent floorspace'. However in 2005 permission was granted for the conversion of No 14 into two units 'comprising 1 x 1 bedroom flat [at ground floor level] and 1 x 4 bedroom maisonette'.⁴ The proposed basement unit would be equivalent in floorspace to that of the ground floor unit at present (both approximating 56 sqm). Therefore no conflict arises in that regard numerically.

5. In 2019 an appeal for the creation of roof terraces and other alterations was dismissed.⁵ Of greater relevance, however, is a 2013 appeal decision.⁶ The 2013 appeal unsuccessfully sought permission for the conversion of the ground floor to a nursery (in that instance for a maximum of 15 children). The 2013 appeal turned on the effect of that proposal on housing supply. The appellant has, understandably, sought to overcome that issue via the basement flat now proposed.

Main issue

6. The Council's decision notice gives two reasons for refusal. The first relates to the appropriateness of living conditions that would result were the basement flat to be implemented and occupied. The second is that, in LBH's view, the proposal would result in an 'inappropriate separation of land uses'. Both are effectively the same issue phrased differently. In that context, I consider the main issue to be whether or not the proposed basement flat would provide for adequate living conditions for future occupants.

Relevant policies

7. Broadly, and amongst other things, LP policy 3.5, DMP policy DM2, NPPF paragraph 127. f), and the SPG, seek to ensure that all development is appropriate to its location, well designed, and achieves a high standard of amenity. CS policy 19 aims to align housing development with needs. DMP policy DM20, criterion ii. sets out how replacement housing should be of an appropriate type, or help to address an identified housing need. DMP paragraph 5.4.2 explains that the most pressing shortage in the Borough is for two bedroom three person homes and for three bedroom five person family homes.

Reasons

8. I have set out above how, in terms of floorspace, no conflict arises with the provisions of LP policy 3.14. With reference to the minimum space standards supporting LP policy 3.5, the required floorspace for a single storey two bedroom dwelling occupied by three individuals is 61sqm. Setting aside how the ground floor flat at No 14 may have been arranged internally or occupied, at 56sqm it would fall short of that presently recommended via LP policy 3.5 for a two bedroom flat. Therefore no substantive conflict arises with the relevant provisions of CS policy 19 or DMP policy DM20, criterion ii.
9. The proposal is to alter, extend, and to convert the ground floor of No 14 into a nursery of approximately 69.7sqm. That would have a maximum capacity of 19 children between 2 and 4 years old. The appellant explains how the design has

⁴ Ref 2005/1708.

⁵ Ref APP/U5360/W/19/3226197.

⁶ Ref APP/U5360/A/13/2192172.

been arrived at with reference to the Government's Early years foundation stage statutory framework, including in respect of scale, arrangement, and specification. The quality of the proposal is supported by the Hackney Learning Trust.

10. The Inspector who determined the 2013 appeal reasoned that proposal would not have had a negative effect on those nearby. The current proposal would similarly include sound insulation along party walls, double-glazed windows, and now also additional noise dampening measures between the ground floor and basement.⁷ There are other commercial and community uses nearby, increasing in concentration approaching Leswin Road and the A10. No 14 falls within a urban location with a PTAL rating of 6a, and there is therefore a baseline level of noise and intensity here. It also proposed that the nursery operates for a limited period of the day, 0800 to 1800 Monday to Friday.
11. The basement unit proposed would have an open plan layout. Floor to ceiling heights would be around 2.35m, which LBH consider appropriate.⁸ In line with SPD section 4.4 bullet point 7, a 30 degree line drawn outwards from the centre of the bay window proposed would project above the ground floor level to the front of No 14. Basements are relatively common to Victorian housing in the Borough. I visited Nos 18, 34 and 124 Brooke Road, properties featuring basements brought to my attention by the appellant.
12. However, the 2013 scheme was not for a basement flat (nor the intensity of use now proposed). Adopting appropriate construction methods would limit noise transmission to an extent. Nevertheless, as shown on figure 2 of the supporting Design and Access Statement, the greatest level of noise within the proposed nursery is likely to be generated in the 'main activity room'. That would be located directly above the open plan bedroom/ kitchen/ living room of the basement flat.
13. The plans show that the nursery would have three openings around an existing lightwell between Nos 14 and 16 above the bedroom and bathroom of the proposed basement flat. That arrangement entails the potential for noise to escape, and potentially to result in behavioural changes (such occupants closing windows).
14. Sound insulation measures do not necessarily reduce vibration to a similar extent, which will inevitably result from use of the proposed nursery and from comings and goings. Noise and disturbance resulting from the nursery would be highly localised and intermittent, and is therefore likely to be far more noticeable than that associated with the surrounding context. I was unable to identify other comparable non-residential uses located above flats in the surrounding area.
15. The basement unit proposed would be of significantly greater depth than frontage. There is a step-down in level from Brooke Road to the rear garden. That, alongside the height of Nos 14 and 16, results in a significant sense of enclosure within the existing lightwell (shown on plan FM/PP-201 Rev: B). LBE state that lightwell amounts to only some three square metres, its principal

⁷ Plan FM/PP-200 Rev: B details sound reduction measures and technical specifications in that regard.

⁸ Albeit that SPG Standard 32 recommends a fractionally greater height of 2.5m.

purpose likely to enable access to drainage. On account of its size and enclosure, the lightwell benefits from comparatively little natural light and no meaningful outlook. Also the 30 degree line drawn from the proposed bay window does not appear to take account of bicycle or buggy storage proposed to the front of No 14 which may impede natural light to some degree.

16. In that context there is no technical evidence before me regarding the level of natural light from which the basement unit would likely benefit.⁹ SPG paragraph 2.3.35 notes how 'natural light is also vital to a sense of wellbeing in the home'. The basement unit would technically be dual aspect, having windows both to the proposed and existing lightwells. However neither would give any real sense of outlook on account of their limited size and enclosure. Similarly neither would provide meaningful external space, representing essentially functional or circulation space.
17. That, in my view, is an arrangement markedly in contrast to the living conditions typical of the area in traditional terraced properties with rear gardens (noting that subdivisions of properties into flats have occurred). Basements at Nos 18, 34 and 124 appear to relate to properties wholly within residential use. There is no evidence before me to indicate that those basements accommodate flats in themselves, or of other factors to enable direct comparison (such as their size or outlook). They are also somewhat the exception to prevailing character.
18. As set out in paragraphs 10 and 11 of this decision, there are various factors that would moderate the potential adverse effects of the proposed co-location of a nursery above a basement flat. However the acceptability of development proposed is inevitably a matter of context-specific judgement. In this instance the basement flat would, on the evidence before me, provide a poor standard of amenity for future occupants. There would be an undue sense of enclosure by virtue of noise and disturbance associated with the nursery above, limited natural light, and no meaningful outside space.
19. Taken together, the proposal would not represent a well-designed scheme that achieves appropriate living conditions. I therefore conclude that the scheme would conflict with the relevant provisions of LP policy 3.5, DMP policy DM2, and NPPF paragraph 127. f), with regard to the approach in the SPG.

Other matters

20. The appellant is evidently committed to providing high standards of childcare in the local area, and I acknowledge that the proposal would be beneficial in certain respects. CS policy 9, for example, sets out how LBH will work with the Learning Trust and others in seeking to meet the needs of Hackney's 'growing population of children'. There is no evidence to indicate that demographic trends are forecast to change significantly, and it is therefore no doubt the case that there is demand for nursery provision in the area. The importance of community facilities is equally recognised in CS policy 3 and NPPF paragraph 92. I am told that the William Patten nursery, a short walk away currently managed by the appellant, is due to close in the near future. Alternative provision nearby, in a location with excellent connectivity, would allow for a convenient transition for many.

⁹ For example with reference to BS EN 17:037:2019.

21. However the benefits of the proposed nursery would be broad, whereas the scheme would result in specific harm. Neither the support in the development plan nor NPPF for community facilities is at the expense of ensuring that all development integrates suitably with its surroundings and provides for acceptable living conditions. There is little substantive or methodological evidence before me as to the availability of nursery provision relative to demand here. Similarly, aside from reference to the William Patten nursery, there is little indication of how provision is anticipated to change in the future (or of alternative options that have been considered and discounted for whatever reason).¹⁰ I cannot therefore conclude that the material considerations in favour of the proposal are sufficient to overcome the harm that would result.

Conclusion

22. For the above reasons, having taken account of the development plan as a whole, the approach in the NPPF, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow
INSPECTOR

¹⁰ Mentioned only in so far as robust evidence in that respect may have carried weight in favour of the appeal.