
Appeal Decision

Site visit made on 28 January 2020

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2020

Appeal Ref: APP/G5750/W/19/3240772

Land to the rear of 233 Church Road, Manor Park, London, Greater London E12 6HN

- 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 Mohammad Khan against the decision of the Council of the London Borough of Newham.
 - The application Ref 19/01970/FUL, dated 8 April 2019, was refused by notice dated 9 September 2019.
 - The development is described as: Resubmission of application reference 19/01066/COU, for the retention of use as storage (use class B8).
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Procedural Matters

1. The description of development in the header above is taken from the application form. I understand the building has been used for B8 storage purposes for some time and therefore the development is retrospective. The phrase "Resubmission of application reference 19/01066/COU" does not describe any part of the development. Taking account of these matters, I describe the development as: use of building for storage (use class B8). I have made my decision on this basis.
2. The Council refer to the proposal being contrary to Policy D13 of the Draft London Plan (DLP), the latest version being the consolidated suggested changes version, published July 2019. The policy relates to the 'agent of change' principle, and broadly seeks to ensure new development does not result in unacceptable levels of noise and disturbance to existing occupiers. The policy includes some minor text changes, though these do not alter the broad aims and objectives of the policy, which are consistent with the National Planning Policy Framework (the Framework). Given the advanced stage at which the emerging London Plan is at, in accordance with paragraph 48 of the Framework, I afford Policy D13 substantial weight.

Decision

3. The appeal is allowed, and planning permission is granted for use of building for storage (use class B8), at Land to the rear of 233 Church Road, Manor Park, London, Greater London E12 6HN, in accordance with the terms of the application Ref 19/01970/FUL, dated 8 April 2019, and subject to the following conditions:

- 1) The plans to which the permission relates are: Location Plan at 1:1250 and the unnumbered plans denoted with the phrase "Modified for Resubmission", which comprise of a floor plan, front and rear elevations and side elevations A and B.
- 2) Use of the site and vehicle trips to and from it shall only occur during the hours of 08:00 to 20:00 Monday to Friday, 09:00 to 16:00 on Saturdays and at no time on Sundays or Bank and Public Holidays.

Main Issues

4. The main issues are:

- whether or not the development is acceptable in principle, with regard to development plan policies;
- the effect of the development on the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance, and
- the effect of the development on the safe operation of the local highway network.

Reasons

Principle of development

5. One of the strategic principles of Policy J2 of the Newham Local Plan 2018 (December 2018) (NLP), is managing the positive and negative impacts of employment-generating uses to ensure a managed transition to successful mixed-use places, large and small scale, to secure a balanced mix of jobs and homes. Hence, in principle, Policy J2 supports small-scale employment generating development that secures balanced, mixed-use places for people to live and work.
6. Among other things, the spatial strategy of Policy J2 identifies existing sites to be protected, sites to be released and sites allocated for employment-led mixed-use schemes. The appeal site is not identified as one such site, though the development does not threaten the efficient use of the existing designated employment sites. As noted, the policy allows for "small-scale (less than 100 sqm GEA) B Class or Sui Generis non-speculative employment floor space that accommodates no more than 10 employees...subject to other policy considerations, notably SP2 and SP8." Hence, as the development has an area less than 100 sqm, is for B8 use and, given the extent of use indicated by the appellant (which the Council has not challenged), is unlikely to generate employment for more than 10 people, the development is acceptable in principle, subject to other policy considerations, in particular SP2 and SP8. Policies SP2 and SP8 broadly relate to healthy neighbourhoods and neighbourly development. These matters will be discussed in the section below on living conditions.

Living conditions – existing occupiers

7. The site is located within a residential area close to dwellings. Given the proximity of the site to dwellings and the fact that the development has occurred, I consider it likely that existing occupiers of neighbouring properties would have taken the opportunity to submit representations if they were experiencing unacceptable levels of noise and disturbance. However, I note

that no objections were submitted in respect of the application and none have been received in respect of the appeal.

8. The plans show that the building would be reduced a little in size, such that the resultant building would be broadly the size of a domestic single garage. As such, I consider the size of the building to be small for B8 storage use. Consequently, this would limit the extent of its use in respect of the number and frequency of visits to the site, the amount of time visitors would spend at the site and therefore the extent of noise generated at the site. Furthermore, a condition could be attached to a permission restricting the hours of use in order to maintain satisfactory living conditions for existing occupiers.
9. Bearing the above factors in mind, I conclude that the development does not have a harmful effect on the living conditions of existing occupiers in respect of noise and disturbance and therefore is acceptable in principle. As such, the development accords with policies J1, J2, S6, SP1, SP2, SP3 and SP8 of the NLP, policies 4.1 and 7.15¹ of the London Plan: The Spatial Development Strategy for London, Consolidated with alterations since 2011 (March 2016) (LP), Policy D13 of the DLP and paragraph 127 of the Framework. Collectively, and among other things, these policies seek to ensure the provision, and efficient use, of employment land to support business and jobs growth and create places for people to live, work and stay, where the living conditions of existing occupiers, with particular regard to noise and disturbance, are protected.

Highway safety

10. The Council consider the lawful use of the building to be a domestic garage, and I have no justifiable grounds on which to disagree with this conclusion. I acknowledge that B8 storage use could generate more vehicle trips to and from the site than a domestic garage. I also note that there is restrictive parking on the road network within the vicinity of the site.
11. However, given the small size of the building and therefore the small-scale nature and extent of operations that could occur at the site, I consider the use of the building for B8 storage would not have a detrimental effect on the operation of the local highway network. As such, the proposal would accord with paragraph 109 of the Framework, which advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

12. The appellant notes that the building is currently let to a domestic user rather than a commercial one. I have made my decision based on the use of the premises rather than the type of user. The appellant has also indicated a willingness to accept a temporary permission, for a two-year period, and to enter into a legal agreement, secured by condition, to continue to let the premises to the existing user for the said temporary period.

¹ The Council has referred to the development not according with Policy 4.5 of the LP. As this policy relates to London's visitor infrastructure, I consider it is not relevant to my assessment of the matters of the principle of the development or living conditions.

13. I note the request for permission to be granted on a temporary basis. However, I consider the effects of the development if granted for a temporary period would be no different than the effects resulting from a permanent permission. I also consider it unreasonable and unnecessary to attach a condition requiring a legal agreement that restricts the use to a specific user. My decision is based on the development being acceptable on a permanent basis for any user.
14. I note that the Council has indicated that it may support residential development on the site. However, planning permission should not be withheld based on any speculative future use of the site.

Conditions

15. I have attached a condition specifying the approved plans for the avoidance of doubt. I have attached a condition restricting the hours of use and vehicle trips to and from the site to protect the living conditions of occupiers of neighbouring properties. The hours specified are a little more restrictive to those suggested by the appellant. However, the site is within a residential area, where existing occupiers should be able to enjoy their evenings, Sundays and Bank/Public holidays.

Conclusion

16. For the reasons outlined above, I conclude that the appeal is allowed.

J Williamson

INSPECTOR