



Appeal Decision

Site visit made on 28 January 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2020

Appeal Ref: APP/U5360/C/19/3229886

Land at 110 Cazenove Road, Hackney, London N16 6AD ('the Property')

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr S Cik, Talmud Torah Yetev Lev against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice, numbered 2018/0544/ENF, was issued on 29/04/2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of an outbuilding and surrounding fencing in the rear garden area of the Property.
 - The requirements of the notice are to:
 1. Remove from the Property the outbuilding in the rear garden area and the fencing that surrounds the outbuilding area.
 2. Make good all damage to the Property resulting from the removal of the unauthorised works and restore the relevant parts of the garden to the condition it was before the outbuilding and fencing were constructed;
 3. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. I direct that the enforcement notice be corrected by:
 - a) The deletion of the contents of paragraph 2 of the notice and the insertion of the following; 'Land at the rear of 110 Cazenove Road, Hackney, London N16 6AD'.
 - b) The substitution of the plan attached to this decision edged in black for the plan attached to the notice.
 - c) The deletion of the contents of paragraph 3 of the notice and the insertion of the following; 'Without planning permission the erection of an outbuilding and surrounding fencing'.
2. The appeal is allowed in part insofar as it relates to the surrounding fencing and planning permission is granted in respect of the surrounding fencing on the Land at the rear of 110 Cazenove Road, Hackney, London N16 6AD on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

3. The appeal is allowed in part on ground (f), and the enforcement notice is varied by the deletion of the contents of paragraph 5 of the notice and the insertion of the following; 'Remove the outbuilding and surrounding fencing from the land and remove all materials, debris, waste and equipment from the land resulting from the removal of the outbuilding and surrounding fencing and restore the land to its condition before the breach took place'.
4. The appeal on ground (g) succeeds and the enforcement notice is varied by the deletion of 3 months and the substitution of 9 months as the period for compliance.
5. Subject to these corrections and variations the appeal is dismissed, and the enforcement notice is upheld insofar as it relates to the erection of an outbuilding and planning permission is refused in respect of the outbuilding on the Land at the rear of 110 Cazenove Road, Hackney, London N16 6AD on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (e)

6. The appellant contends that the notice was not served on the owner Landclose Estates Ltd who lives in Israel, and that the owner has not made any contact in relation to the notice and has not appealed.
7. The appellant also refers that the notice relates to land at No. 110 Cazenove Road. However, three months prior to the notice was issued the land at the rear of No. 110 had been sold to Landclose Estates Ltd and is a separate planning unit from No. 110. The land registry entry refers to the transfer of land taking place in December 2018 and the Council were notified prior to the notice being served that the rear garden was no longer part of the ownership of No. 110. Nevertheless, the previous owners of the land Wiseheights Ltd were served with the notice but they had no interest in the land. The appellant asserts that the notice was wrongly served and prejudices the people it was served upon.
8. The Council maintain that when the case was investigated the appeal land formed part of No. 110. It was informed prior to the notice being served that the rear garden area of No. 110 was changing hands. However, the land registry information during the point of service identified the entire site in one ownership and the rear garden area was not in separate ownership. The information that there was new ownership of the garden plot was made known to the Council on 24/05/2019 after the service of the notice. As a result, the Council were required to serve notice on the occupiers of No. 110 and so no prejudice has arisen, as the notice was properly served.
9. The Council has served notice on the Company Secretary of Landclose Estates Ltd which is sufficient for the purposes of service on the owner of the land in relation to sections 329 and 172 of the Act as amended. There is no evidence presented that this step had not been undertaken or that the registered Company was not appropriately served the notice at the time of issue.
10. The appeal is made by the occupier of the outbuilding. Those who have been served who have no interest in the land following the sale of the land have not been prejudiced by the service of the notice on them as the current land registry plan can be substituted for the plan attached to the notice, and the

description of the land changed by correction under section 176 of the Act as amended. Similar changes are needed to the allegation by deleting reference to 'in the rear garden area of the Property', since this no longer comprises garden area of the Property No. 110, following the sale of the land to the school. No prejudice would arise in these changes as it merely reflects the current land ownership situation.

11. The appeal on ground (e) therefore fails.

The appeal on ground (a) and the deemed application

12. The deemed application derives its terms directly from the allegation as corrected. The main issues in this case are the effect of the development on the character or appearance of the Northwold and Cazenove Conversation Area (CA), the need for the facility and the implications of the Equality Act 2010, and whether other material planning considerations are sufficient to outweigh any conflict with the development plan.

13. The area of land to which the notice relates as corrected comprises land to the rear of No. 110. The land which is rectangular in layout now forms part of the adjoining school use at No. 112. Nearly, the whole area of the appeal land is covered by a single-storey outbuilding used as a dining/assembly room for the school. Apart from one open side facing the school rear yard the site is bordered by fencing. A fence separates the appeal land from the remainder of No. 110's garden and forms part of the allegation.

Conservation area

The outbuilding

14. In relation to conservation areas the statutory provision of the Planning (Listed Buildings and Conservation Areas) Act 1990 section 72(1) says that 'In the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area'.

15. The CA appraisal 2010 notes that the significance of the CA derives from the surviving Victorian housing stock which is regarded as high quality and varied in external decoration. The appraisal describes that almost the whole area was developed on lands owned by the Tyssen-Amhurst family and built during the late Victorian period between 1870 and 1890. Two distinctive residential areas in the CA comprise one to the south and one to the north of Northwold Road. The third distinctive area of the CA is noted as Stoke Newington Common and the surrounding terraces. The appraisal notes there are similarities in the design of houses due to the control imposed by the Tyssen-Amhurst Estate but there is also considerable variety particularly in the form of external decoration of the houses emphasising fashion and subtle changes in taste of developers.

16. The appraisal also regards the front gardens of the Victorian houses as a significant asset of the CA. However, the appraisal notes that many of the spacious front gardens on Cazenove Road have become hard standings for cars. Another feature of the significance of the CA is the planned layout of the area in relation to long, curving parallel streets leaving no back-land plots. It is noted in the appraisal that the areas to the rear of the terraces are exclusively given over to gardens and are devoid of development, and the open, rear

garden plots are an important characteristic of the CA. The appraisal refers to the rear of the houses often having small extensions which project out from the main block fronting the street and that these generally contained service rooms giving the rear of the rows a distinct architectural rhythm.

17. The appellant's heritage report identifies that the building frontage to Cazenove Road is of significance to the CA but notes the mixture of modern buildings in the vicinity of the appeal site to the rear of the Cazenove Road frontage block at Fountayne Road. The report notes that the late 19th Century Victorian buildings would have been constructed to be used as single dwellings but now they have been adapted to mixed uses such as educational and religious worship, commercial and residential uses. The report indicates that the setting in the vicinity of the development to the rear of No. 110 includes varying styles of post war extensions that reduces outside garden space. These include stand-alone outbuildings and annexes attached to the main buildings. The report highlights that as a result there is no clear uniformed design to the rear of the terrace block. The similarities in the rear elevations of the buildings are confined to wide bay casement windows, brickwork and the number of storeys. The rear garden spaces it is argued are defined by narrow enclosed areas that are independent of one another, the building and gardens for each unit have a unique identity and the only views across this space are from first floor level and above. As a result, the report asserts that the garden areas were not designed to provide for any public benefit to the urban setting and are insular in their design.
18. The rear gardens of the terrace block on Cazenove Road in my view are a positive contributing facet of the grandeur of the Victorian buildings. They allow space for the terrace buildings to be seen and be appreciated. It is evident that the gardens were planned in conjunction with the terrace and while they are predominantly individual plots of gardens in the middle of the terrace there is a communal garden spanning three units. This is devoid of curtilage buildings and has an open aspect appreciated as a private view from neighbouring properties from the first-floor level and above. To the rear of No. 110 this individual garden before the end piece was purchased in connection with No. 112 would have been part of the rear open aspect of the property and identified in conjunction with other spaces as important in the CA appraisal. There now stands in the area acquired from the garden of No. 110 a square felt roof building occupying the whole space with a fence built right-up against the appeal outbuilding.
19. I note that some change has occurred with the construction of outbuildings in the grounds of No. 116 and there are outbuildings adjacent to the rear boundary of No. 110. However, these additions over time have not changed the defining interest of the rear spaces which forms part of the Victorian terrace and its context. The contribution these rear spaces make to the character of the Victorian terrace is important as recognised in the CA appraisal. Whilst they are private spaces their significance is not diminished because there is no public view of them from the road. Residents and visitors can gain an appreciation of the space and setting of the Victorian buildings and gardens from this rear aspect from first-floor levels and above. I also do not consider that the changes made to the rear terrace over-time has significantly altered its appearance and general uniformity such that the garden space to the rear has been compromised as a character feature worthy of preservation.

20. Turning to the effect of the development on the CA. The outbuilding fills the whole space of the appeal site and disrupts one defining characteristic of the CA that is the rear space behind the terrace. The outbuilding allows no circulatory space and mars the layout of the rear spaces and the ability to appreciate the terrace. Constructed of wood walls and one brick wall, felt roof and uPVC windows its form, layout and materials appear incongruous harming the appearance of the CA. Although these are private spaces and there is no public view of the outbuilding the spatial character of rear spaces viewed in conjunction with a Victorian terrace is of significance to the CA and the impact of the outbuilding would fail to preserve the appearance of the CA.
21. The appellant contends that the outbuilding is not permanent and is reversible. However, it is constructed of durable and permanent materials and its impact on the CA could endure for a considerable time. In addition, the suggestion that the building could be improved by imposing planning conditions in terms of construction and materials would not overcome the harm in relation to its form and layout. The comparisons made between the outbuilding and the building in the grounds of No. 116 have been noted but do not alter the defining interest and significance of this part of the CA.
22. The appellant indicates that although the property does not enjoy permitted development rights, the outbuilding falls within the dimensions that would otherwise have been permitted development. The Council points out that permitted development is not available in this instance and in any event disputes that it would meet the limitations of permitted development rights. As indicated by the appellant permitted development rights is not available and therefore there is no real prospect of implementation such that this material consideration can be given but limited weight.
23. Relevant Policy DM28 of the Hackney Development Management Local Plan (LP) indicates that development in conservation areas shall preserve or enhance the character and appearance of the respective area. This is similar to the statutory provision set out above. Policy 25 of the Hackney Core Strategy (CS) has not been provided and is not referred to in submissions.
24. Other policies refer to the London Plan (policies 7.4 and 7.6), the CS (policy 24) and LP (policy DM1) and broadly relate to general design aspirations for new development. The Supplementary Planning Document relates to residential extensions and does not strictly apply to the appeal development. The appellant refers to CS Policy 9 where favourable consideration is given to appropriate new educational facilities. However, in this case I do not regard the educational facility to be appropriate in this form and in this context.
25. The National Planning Policy Framework (the Framework) 2019 indicates 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.
26. I consider the outbuilding development would lead to less than substantial harm to the significance of the designated heritage asset. However, the appellant has not expressly stated what public benefit would be gained from the development. Nevertheless, public benefits could be anything that delivers economic, social or environmental objectives as described in the Framework.

27. There is the public benefit of providing the school facility to support the Satmar Community by ensuring current and future school needs are met which in turn supports the Community's health, social and cultural well-being in line with paragraphs 94 and 95 of the Framework.
28. However, these public benefits do not outweigh the less than substantial harm to the significance of the designated heritage asset. The Framework indicates that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
29. In this case the outbuilding fails to preserve the appearance of the CA, and therefore fails the statutory provision of the Planning (Listed Buildings and Conservation Areas) Act 1990, section 72(1).

Need for the facility and the implications of the Equality Act 2010

The outbuilding

30. The appellant sets out that the Orthodox Jewish Charedi (OJC) Community comprise some 14% of Hackney's population and 24% of the Borough's school population. The Community is reported to have limited options in choosing an area to reside and require each other and community and religious facilities and shops to serve their needs which puts pressure on existing Community infrastructure and a financial burden on shops and educational facilities as they are privately funded.
31. Within the Community there are multiple sects and groups where customs are practised. The Satmar Community is one group amongst the wider OJC Community. The Satmar Community require schools and places of religious worship to serve their own needs. The appellant asserts that as part of the Satmar ethos Satmar children attend their own schools and have no other place to go for their education.
32. The main school building is situated at Nos. 111-115 Cazenove Road adjacent to the Jubilee Primary School. The Satmar Community has grown such that the school building has expanded over time and as a result the Satmar Community has acquired properties on Cazenove Road with each building providing education for a particular-age group. No. 112 provides classes for age 6 and 7 and given the demand for school places there was no longer space for a lunchroom. As a result, and before the outbuilding was constructed, children had to be ferried across Cazenove Road to use the dining room on the top floor of the main school building, and the school day had to be arranged to coincide with the availability of the dining room in the main school building.
33. The outbuilding functions as a room for school assemblies, an indoor play area and dining room. Should the outbuilding be required to be demolished this would deprive the school of a classroom and children of the age group would have to be turned away. The appellant refers to a planning application made for a third-floor mansard roof extension for the main school building and indicates that this is yet to be determined by the Council putting more pressure on the school to accommodate the growth in school numbers.
34. The appellant and the representations from parents of the school children refer to the capacity issues and the need to retain the outbuilding facility at No. 112

citing concerns that should the building be removed this would revert to children having to be chaperoned across a busy road and returned following lunch. In addition, the school day requires to be planned around the availability of the main school dining room.

35. The appellant requests as an alternative that consideration is given to grant a temporary permission for 5 years to allow the school to acquire additional space. Furthermore, the appellant asserts that the delay in determining the planning application to extend the main school building is putting a strain on the school's capacity to accommodate the growth in numbers of school children within the Satmar Community.
36. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
37. Since the appeal is made in connection with the Satmar Community which forms part of the OJC and relates to the educational needs of children of this Community these are persons who share a protected characteristic for the purposes of the PSED. Whilst no submissions are expressly made in relation to the PSED I have due regard to the disadvantage caused to the ability of the school to cater for the growth in numbers of school children within the Satmar Community whereby the removal of the outbuilding which functions as dining/assembly/indoor play room would reduce the classroom capacity of the school which may result in children of this Community being turned away. There are issues of child safety, disruption and inconvenience to the operation and function of the school should the building be removed as children would need to be chaperoned across a busy road and at times when the main school dining room is available. All these factors highlighted by the appellant through the assessment of need create a disadvantage to persons who share a protected characteristic in relation to the due regard duty of the PSED.
38. I therefore attribute the issue of need and the implications of the Equality Act 2010 significant weight.

Conclusions - outbuilding

39. I conclude on the first issue that the effect of the outbuilding fails to preserve the appearance of the CA. The outbuilding construction conflicts with LP Policies DM28 and DM1, CS Policies 24 and 9 and London Plan Policies 7.4 and 7.6. The development would lead to less than substantial harm to the significance of the designated heritage asset. However, this harm is not outweighed by public benefits of the outbuilding.
40. In relation to the second issue, significant weight is attributed to the issue of need and the implications of the Equality Act 2010.
41. However, it does not follow from the PSED that the appeal should succeed.
42. In the overall balance the considerable weight and importance attached to the desirability of preserving the appearance of the CA outweighs the second issue. The harm to the CA would be significant and permanent should permission be granted for the outbuilding and a temporary permission would ensure that the harm would endure for a period of 5-years.

43. Notwithstanding my conclusion on need and the PSED the outbuilding is not the only solution to meet the needs of the school and I note the Community is pursuing a planning application to expand current facilities at the main building. However, in all, the considerable weight and importance attributed to preserving the CA outweighs the need and the implications of the Equality Act in this case.
44. In relation to the outbuilding other material planning considerations are insufficient to outweigh the identified conflict with the development plan as a whole.

Fencing

45. The appeal land and notice as corrected by the implications of the ground (e) appeal mean that the land is severed from No. 110 in ownership and function. The likelihood of the land returning to its previous use and function is slight and the owners of the land would in the normal course of ownership and use want to enclose the land by means of a fence, similar to other fences in the vicinity. The fence itself is not unlike other fences and serves a purpose of enclosure it is therefore needed, and it does not diminish the rear space of the Victorian terrace and significance of the CA.
46. The fence has a neutral impact on the CA and is required as a means of enclosure. The fencing does not conflict with LP Policies DM28 and DM1, CS Policies 24 and 9 and London Plan Policies 7.4 and 7.6. I consider the fencing development would lead to less than substantial harm to the significance of the designated heritage asset and this harm is outweighed by public benefits of securing a means of enclosure for the use and function of the land in connection with the school use at No. 112.

Overall conclusion on the ground (a) and the deemed application

47. I conclude that a split decision for the ground (a) deemed application is appropriate in this case, allowing permission for the fencing, and dismissing the appeal and upholding the notice in respect of the outbuilding. No conditions have been suggested for the fencing and none in my view are necessary.
48. I note the representations and petition in support of the development and representations against it which all have been taken into account. Noise and disturbance, traffic generation and parking were not matters raised by the Council in issuing the notice. Whilst these are material to the broader use of the site there is no compelling evidence that the construction of the outbuilding and fencing themselves has led to these adverse effects or that would outweigh my conclusions on the main determining issues in this appeal.
49. As I intend to grant planning permission for the fencing, the requirement of the notice to remove the fencing has no effect in so far as it is inconsistent with the planning permission granted, as set out in section 180 of the Act.

The appeal on ground (f)

50. The notice requires the removal of the outbuilding and fencing and to make good and restore the relevant parts of the garden, together with removal of all debris and material. As indicated with the correction to the description of the land to which the notice and plan relates to require the land to be restored as garden land in association with No. 110 would be excessive. The land has been

severed in ownership and function and it would be excessive to require it to be returned to garden land in association with the adjoining property.

51. The appeal on ground (f) to this limited extent succeeds.

The appeal on ground (g)

52. The appellant indicates that 3 months is too short a period to address the issues of removal of the outbuilding and the provision of an alternative facility to serve the school and to reduce the capacity pressures of school numbers as set out in the ground (a) appeal. The appellant also cites the delay in determining the extension application to the main school building which would alleviate the need for school places. The appellant requests 4 years as the period for compliance.

53. The Council considers that 3 months is sufficient time to remove the outbuilding and considers that the former lunchroom within No. 112 could be reinstated and therefore the school could remain functioning.

54. I have already considered and dismissed the request for a 5-year temporary permission as part of the ground (a) appeal. However, I must balance the Council's reasons for issuing the notice in the public interest against the burden placed on the appellant and the disadvantage to persons who share a protected characteristic in relation to the due regard duty of the PSED.

55. In my view, a period of 9 months would strike the appropriate balance between these two conflicting interests so there would not be a disproportionate burden placed on the appellant. Whilst this extends the period of compliance it would provide an opportunity to find an alternative solution for the needs of the school.

56. To this limited extent, the appeal on ground (g) succeeds.

Iwan Lloyd

INSPECTOR



Plan

This is the plan referred to in my decision dated: 13 May 2020

by Iwan Lloyd BA BTP MRTPI

Land at: the rear of 110 Cazenove Road, Hackney, London N16 6AD

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Not to Scale:

