



Appeal Decision

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2020

Appeal Ref: APP/U5360/W/20/3244607

11 Northfield Road, Hackney, London N16 5RL

- 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 Moses Abraham against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2019/1295, dated 5 April 2019, was refused by notice dated 3 September 2019.
 - The development proposed is described as Change of use of basement floor from residential into nursery to combine with existing nursery at ground floor level.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council have agreed to the appeal proceeding on this basis.

Main Issues

3. The main issues are the effect of the proposal on;
 - The loss of residential floorspace within the area; and
 - The effect on the living conditions of neighbouring occupiers with regards to noise and disturbance.

Reasons

Loss of residential floorspace

4. The existing nursery is positioned on the ground floor and in use by approximately twenty children and staff. The remaining floors are described by the appellant as a prayer house and residential accommodation.
5. Policy DM20 of the Hackney Development Management Local Plan 2015 (LP) advises that development involving the loss of residential floorspace will only be permitted provided it meets specific criteria i. – viii. In respect of this appeal, the most relevant criteria of this policy are summarised as; i. the

- building is no longer fit-for-purpose; ii. replacement housing of an appropriate type is being provided; vii. the building is in the right location to be used for an essential community use for which there is a demonstrable need.
6. The existing basement level shares a very close relationship with the outdoor nursery recreation space. The appellant confirms it is not for the combined use of the occupiers of the basement flat and the nursery. However, given the building is within one ownership, the unavailability of this space for the flat's occupiers would not amount to it being reasonably considered as not fit-for-purpose in accordance with Policy DM20 of the LP.
 7. Given the proposed opening hours of the nursery until a maximum time of 6pm weekdays, and its closure at weekends, it is a reasonable assumption that future occupiers of the flat are likely to be away from it during the daytime throughout the working week. During evenings and weekends however, there would be an expectation that the occupiers would most likely to be at home, and there would be no noise and disturbance as a consequence of the use of the garden by the nursery. For the purposes of Policy DM20 of the LP, this would not lead to the flat being considered as not fit-for-purpose.
 8. Various nursery paraphernalia has been deposited within close range of rear windows of the flat. However, the whole building is within the same ownership, and therefore benefits from the opportunity to control the management of the external areas of the appeal site, or rearrange internal living spaces to make it satisfactory to the appellant. Furthermore, any future occupiers would be aware of the layout of the flat, its outlook and privacy levels before they would commit to living here. These matters would not justify the building as being no longer fit for purpose.
 9. No replacement housing is sought as part of the appeal and criteria ii. of Policy DM20 is not met. Furthermore, there is no evidence presented by the appellant to demonstrate that there is demand for a further 20 nursery spaces in this area to justify its purpose as an essential community use in accordance with criteria vii of DM20 of the LP.
 10. The proposal is not in accordance with the requirements of Policy DM20 of the Hackney Development Management Local Plan 2015 that permits the loss of residential floorspace provided it meets certain criteria. The proposal also conflicts with the London Plan 2016 Policy 3.14. This policy seeks to resist the loss of housing unless it is replaced at existing or higher densities with an equivalent floorspace.

Living Conditions of neighbouring occupiers

11. The appellant is willing to provide internal noise mitigation measures as well as to reduce the hours of opening that has been applied for. However, irrespective of the excursions the children may make outside the premises, the proposed nursery children would be required to share the existing outdoor space for recreation. Its use is already restricted by planning condition for use no more than three hours on any one day, in order to protect the living conditions of neighbouring occupiers who live in close proximity to the appeal site.
12. The intensification of the site by another 20 children who would use the outdoor space would result in additional noise and disturbance within a limited

area. This would be detrimentally harmful to the living conditions of the neighbouring occupiers.

13. I do not find the proposal would be in conflict with the Core Strategy Policy 24 Design, of the Local Development Framework Core Strategy 2010 as this more specifically relates to design of the built environment. However, the proposal would be contrary to the LP Policy DM1 that requires development, in particular, to achieve high standards of amenity, amongst other matters, as well as Policy DM2 that seeks for new development to be designed to ensure it will not adversely impact on amenity of occupiers and neighbours, including noise, amongst other considerations. It is also contrary to Policy 7.6 of the London Plan 2016 that seeks development to be of high quality that does not cause harm to amenity.

Other Matters

14. Despite the fact that no objections have been received to the proposal, I have a duty to assess the appeal before me and have come to my own decision.

Conclusion

15. The appeal is dismissed.

Alison Scott

INSPECTOR