
Appeal Decision

Site visit made on 8 September 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/U5360/C/19/3244092

42 Leweston Place, London N16 6RJ

- 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 Y Benedikt against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 29 November 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use from a single dwelling house (Class C3) to a school (Class D1)
 - The requirements of the notice are:
 - (1) Cease the use of the property as a school.
 - (2) Remove from the Property all fixtures and fittings facilitating the use of the Property as a school.
 - (3) Remove all waste, materials, equipment, and debris from the Property resulting from compliance with the requirements in paragraphs (5) (1) to (2) of this notice.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) 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. It is directed that the enforcement notice is:
 - corrected by deleting the words "shown edged black and hatched on the attached plan" under section 2 of the enforcement notice (the land to which the notice relates) and deleting the site plan attached to the enforcement notice.
 - varied by deleting the words "One (1) month" within section 6 (Time for Compliance) and its replacement with "Six (6) months".
2. Subject to the correction and variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. Under their appeal on ground (b), the appellant states that the land edged in black and hatched on the attached plan referred to in the enforcement notice

incorrectly includes the property at No 42a Leweston Place, which is separate address and is not in the same use. The Council have also clarified that No 42a is a different planning unit and that the allegation relates specifically to No 42 Leweston Place. It therefore appears that the inclusion on the site plan of No 42a is an error and should not have been included. However, it is clear from the address on the notice what the property is and therefore the notice as a whole identifies the property correctly. The appellant appears to have understood the allegation and, in my opinion, the error on the site plan does not render the notice unclear. It is necessary however to correct the notice by deleting the incorrect site plan from the enforcement notice. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to make this correction.

4. During the course of this appeal, the London Borough of Hackney's Core Strategy (2010) and Development Management Local Plan (2015), and policies contained within it, have been replaced with the Hackney Local Plan 2033 Strategic Planning (Local Plan), which was adopted on 22 July 2020. Therefore, this must now be given full weight in the decision making process. The Council have provided copies of the relevant recently adopted Local Plan policies and the appellant has been given the opportunity to respond, and so has not been prejudiced. I have therefore not assessed the development against the policies of the superseded Core Strategy (2010) and Development Management Local Plan (2015).

The appeal on Ground (b)

5. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact. As outlined above, the appellant states that the land edged in black and hatched on the plan attached to the notice includes No 42a which is a separate address and is not in the same use. Therefore, the appellant considers that if it is found that it is not a separate entity than the notice should have alleged a mixed use.
6. However, both parties have confirmed that No 42a is a separate planning unit and that the change of use does not include No 42a. This was also confirmed by the appellant's representative during my site visit. The notice as a whole therefore identifies the property correctly, and there is no need for the notice to allege a mixed use as suggested by the appellant. Furthermore, the appellant accepts under his ground (a) appeal that the property is needed to provide for the use alleged in the notice. Therefore, on the balance of probability, I consider that the matters as alleged in the notice have occurred as a matter of fact.
7. Accordingly, the appeal on ground (b) must fail.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

8. The main issues are:
 - whether the change of use to a school is acceptable, having regard to the effect on the supply of single family dwelling houses; and

- the effect of the change of use to a school on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

Supply of single family dwelling houses

9. Policy LP24 of the Local Plan seeks to increase overall housing stock in the borough and therefore resists the loss of existing residential uses. However, the Policy lists a number of conditions where a loss of housing may be considered acceptable. One of these conditions, relates to part A vi) which permits proposals for an essential community use or infrastructure for which there is demonstrable need, and it can only be provided by the loss of existing residential floorspace.
10. The appeal property is a well sized two storey property, with a loft conversion which prior to the current unauthorised change of use, would have contained three or more bedrooms as originally built. As such, it is capable of being used as a family dwelling. Although the appellant states that the property is needed to provide for the school no substantive evidence of the demonstrable need has been provided, nor supporting information to demonstrate this this can only be provided by the loss of this family dwelling.
11. In the absence of any substantive supporting evidence, I conclude on the first main issue that the development has an unacceptably harmful impact on the supply of single family dwelling houses, contrary to Policy LP24 of the Local Plan and Policy 3.14 part b) of the London Plan, 2016 (LP), which seek the aforementioned aims and states that the loss of housing, should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace.

Living Conditions of Neighbouring Occupiers - Noise and Disturbance

12. This appeal seeks the change of use of the property from a family dwelling house to a school. Whilst, no specific details of the school have been submitted, the Council state that they have previously been advised by the owners that there are around 20 students attending the school.
13. During my site visit I observed that the appeal site has a fairly quiet residential character, with predominantly single family dwellings. I consider that the introduction of a school with approximately 20 pupils, would be likely to lead to significant levels of noise and disturbance which would adversely affect the living conditions of neighbouring occupiers. This would derive from noise generated from 'comings and goings' outside of the building, increased vehicular and pedestrian movements and the use of the rear garden for outside play space. This would be even more noticeable during spring/summer months when neighbouring occupiers are more likely to have windows open for ventilation, and more likely to be using their gardens for alfresco dining and for relaxation.
14. The appellant states that the rear of the property abuts a school and two synagogues. However, these appear to be located on the busy A10 Stamford Hill, which comprises a mix of uses and where levels of vehicular and pedestrian activity are more likely to be busy throughout the day and evening. However, the appeal property and its main entrance, is located in a quiet residential street, characterised by residential dwellings, which are more

sensitive to noise. As such the presence of these neighbouring synagogues and school does not lend support for the current location of the school.

15. I conclude that the school use results in levels of noise and disturbance which would adversely affect the living conditions of neighbouring occupiers. In reaching this conclusion, I note that an objection has been raised by a neighbouring occupier on noise and disturbance grounds specifically referring to the use of the school from early hours in the morning until late at night.
16. I therefore find the change of use of the property to a school has a harmful effect on the living conditions of neighbouring occupiers, with regards to noise and disturbance, in conflict with Policy LP2 of the Local Plan. This requires that all new development must be appropriate to its location and should be designed to ensure there are no significant adverse impacts on the amenity of occupiers and neighbours.

Other matters

17. The appeal property is currently in use as an Orthodox Jewish School. The use may therefore relate to relevant protected characteristics for the purposes of the Equality Act 2010. I am required to have due regard to the Public Sector Equality Duty as required by that legislation. However, whilst I give moderate weight to these needs, they do not outweigh the harm that I have identified in relation to the main issues and the non-compliance with the LP and Local Plan.
18. Section 4 of the notice (reasons for issuing this notice) refers to "the residential unit located attached to the existing nursery". However, the Council have clarified that there is no nursery close to the appeal site and therefore this is an error. I have thus not considered this matter further.

Conclusion on Ground (a) and the Deemed Planning Application

19. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The Appeal on Ground (g)

20. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant has subsequently revised their Ground (g) appeal, as a result delays in finding an alternative site due to the current pandemic. The appellant asks that the time for compliance is extended from 1 month until the end of March 2020 (6 months).
21. In response to this the Council state that 6 months is appropriate and reasonable, which also minimise the disruption for the pupils whilst also striking the right balance between the need to resolve the breach of planning control. I also consider that the 6 months requested would strike a reasonable and proportionate balance in these circumstances. I shall therefore vary the period for compliance prior to upholding the notice to 6 months.
22. To this extent, the ground (g) appeal succeeds and I will vary the notice accordingly.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

R Satheesan

INSPECTOR