The Planning Inspectorate

Appeal Decisions

Site visit made on 30 June 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2021

Appeal A Ref: APP/U5360/W/20/3245280
Land adjoining 80 Mortimer Road, Hackney, London N1 5AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr S Freeman of OLL Projects Ltd against the Council of the London Borough of Hackney.
- The application Ref 2019/3938 is dated 5 November 2019.
- The development proposed is the demolition of existing single storey structure and erection of single storey over lower ground floor building to provide 1 x 1 bedroom self-contained dwelling (use class C3), and associated building works including retention and alterations to side boundary walls.

Appeal B Ref: APP/U5360/Y/20/3245281
Land adjoining 80 Mortimer Road, Hackney, London N1 5AP

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
- The appeal is made by Mr S Freeman of OLL Projects Ltd against the Council of the London Borough of Hackney.
- The application Ref 2019/3942 is dated 5 November 2019.
- The works proposed are the demolition of existing single storey structure and erection of single storey over lower ground floor building to provide 1 x 1 bedroom self-contained dwelling (use class C3), and associated works including retention and alterations to side boundary walls.

Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is allowed and listed building consent is granted for the demolition of existing single storey structure and erection of single storey over lower ground floor building to provide 1 x 1 bedroom self-contained dwelling (use class C3), and associated works including retention and alterations to side boundary walls at land adjoining 80 Mortimer Road, Hackney, London N1 5AP in accordance with the terms of the application Ref 2019/3942 dated 5 November 2019, subject to the conditions contained within the schedule at the end of this decision.

Preliminary Matters

3. The Council has confirmed that had it determined the planning application (appeal A) and the listed building consent application (appeal B) that they would have been approved. I have received an objection on behalf of occupiers of neighbouring properties. As the proposal relates to listed buildings and a site located within a conservation area and the setting of listed buildings, I shall have special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I have used these factors to determine the main issues in this case.

4. The Hackney Local Plan (LP) was adopted in July 2020 and is now part of the development plan for this appeal. The Council and the appellant have had the opportunity to make comments in light of the LP.

5. The new London Plan is at an advanced stage. I have given significant weight to policies that are not subject of a direction by the Secretary of State contained within the "Intend to Publish" version.

6. An executed Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (S106) was submitted during the course of the appeal. I will return to its provisions in my main and other issues. I have taken the legal agreement into account in coming to my decision.

7. The appeal form suggests that the planning application reference number for appeal A is 2018/3938. However, documentation from the Council suggests it should be 2019/3938, and that would be consistent with the reference number in appeal B. I have used the reference number from the Council in my decision.

Main Issues

8. The buildings at 21-30 De Beauvoir Square, in whose curtilage the boundary wall between the appeal site and those buildings is located, are Grade II listed and within De Beauvoir Conservation Area. Consequently, the main issues in both appeals are whether the proposed works and development would preserve the special architectural and historic interest (or significance) of the listed buildings, preserve the settings of nearby listed buildings and whether the character or appearance of the conservation area would be preserved or enhanced.

9. The additional main issues in appeal A are whether or not the development makes adequate provision for affordable housing and the effect of the living accommodation on the living conditions of occupants of the proposed dwelling.

Reasons

Affordable Housing

10. Policy LP13 of the LP requires new development to maximise opportunities to supply genuinely affordable housing. In schemes of below 10 units, payments in lieu of up to the equivalent of 50% of housing should be delivered, subject to viability.

11. The UU submitted under S106 would secure an affordable housing contribution of £25,000. However, the Council state that this should be calculated as a £50,000 contribution from each additional unit created as a result of the development as opposed to the affordable housing portion of the development,

which would be 50% of the calculation. Consequently, the amount within the UU is only half of the required payment in accordance with Policy LP13 of the LP. The appellant has not disputed that the contribution should be calculated at £50,000. As a result, the proposed contribution would not comply with Policy LP13 of the LP.

12. The National Planning Policy Framework (the Framework) paragraph 63 and Planning Practice Guidance[1] (PPG) state that affordable housing should not be sought for residential developments that are not major developments. The Framework and PPG are material considerations of very significant weight. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the appeal be determined in accordance with the development plan, including LP, unless material considerations indicate otherwise. The Framework must be taken into account in preparation of the development plan and I note that Policy LP13 of the LP has been adopted since the Framework was published. Consequently, the conflict with Policy LP13 of the LP carries substantial weight in the planning process.

13. Policy LP13 of the LP enables the viability of the scheme be taken into account. The appellant suggests that the scheme would not be viable with an affordable housing contribution but has not submitted a full viability assessment. I note that development costs may be high given the constrained nature of the site and taking account of other financial complications. Nevertheless, sufficient evidence has not been provided to conclude that the proposal would not be viable taking into account contributions toward affordable housing.

14. For these reasons, I conclude that the proposal does not make adequate provision for affordable housing. As such, it conflicts with Policy LP13 of the LP.

Listed Buildings

15. The houses at 21-30 De Beauvoir Square comprise semi-detached or terraced properties dating from the early to mid-19th century. They are attractive brick buildings with stucco dressings fronting the open square. Their significance as listed buildings derives from their contribution to the character and appearance of the area and their group value with other listed buildings surrounding De Beauvoir Square. Their setting comprises De Beauvoir Square, around which they are set, and the roads approaching it including Mortimer Road.

16. The rear gardens of the houses are modest, with a brick wall to the rear providing the boundary with the side of the appeal site. That brick wall is within the curtilage of the listed buildings, so it is included within the listing. It is a simple and functional wall with a blank brick face to the appeal site that delineates the boundary of the listed dwellings and it is these factors that provide the wall's significance. I understand that it would have originally had some coping at the top, but this has been removed at some point in the past. It provides support for the corrugated roof that links over the site to 80 Mortimer Road, providing a covered storage and access area to the industrial building behind.

17. The appearance and materials of the covered storage area, including the roof, substantial access doors, and gates on Mortimer Road result in a utilitarian and industrial character to the site. That appears incongruous adjacent to the

[1] PPG reference ID: 23b-023-20190901

surrounding houses, including 21-30 De Beauvoir Square. As such, it harms the setting of the listed buildings.

18. The proposal would result in a dwelling inserted into the space between the boundary wall and the house at 80 Mortimer Road, with the lower floor excavated into the ground. The boundary wall would form the side wall of the house and be extended above with additional footings provided below. The dwelling would take up a modest part of the boundary, although otherwise the wall would be retained in its existing form and its function as a boundary between properties would remain. Limited details of the method of construction demonstrating how this would take place without harm to the wall have been provided, but further information can be required by condition and I see no reason to consider that the works and development would harm the wall or affect the ability to proceed. As a result, the alterations to the wall would be modest and would preserve this curtilage listed structure.

19. The proposed dwelling would extend across the width of the site, linking the boundary wall with the existing house at 80 Mortimer Road. It would comprise a lower ground floor containing most of the accommodation, with a bedroom and bathroom on the ground floor above. It would be considerably lower than the existing house. As a result, it would be subservient to that dwelling, particularly insofar as it would be viewed from and would relate to the listed buildings. The house at 80 Mortimer Road would be visible behind in views from the listed buildings and would dominate the new dwelling. It would result in the removal of the existing industrial and utilitarian structure that harms the setting of the adjacent houses. Taking all these factors into account, on balance, the dwelling would enhance the setting of the listed buildings.

20. For these reasons, I conclude that the proposed dwelling would conserve and enhance the significance of the listed buildings at 21-30 de Beauvoir Square. As such, it would comply with Policy 7.8 of the London Plan, Policies LP1 and LP3 of the LP and the Framework that seek development to respect and complement historic character and to conserve and enhance the significance of listed buildings including by retaining and repairing historic features and fabric, and their settings.

Conservation Area

21. De Beauvoir Conservation Area comprises development of the de Beauvoir Estate dating from the mid-19th century and predominantly comprises residential development of short terraces and semi-detached houses on tree lined, spacious streets. Mortimer Road leads off De Beauvoir Square that provides open public gardens surrounded on three sides by the original houses dating from development of the estate. The listed buildings at 21-30 De Beauvoir Square adjacent to the site are part of that original development, as are the semi-detached and terraced dwellings on Mortimer Road. The buildings on Mortimer Road provide a rhythm to the street. To the rear of the site is a now vacant factory that fronts Hertford Road. The significance of the conservation area as a heritage asset derives from its layout and the quality of the buildings.

22. The appeal site comprises access and a covered storage area to the factory to the rear. The front yard area between the solid front gate and the front elevation of the adjacent 80 Mortimer Road is open, with the remainder covered. The covered area comprises a large gate over the front of the building

and corrugated roof with timber rafters resting on the brick boundary wall between the site and 21-30 De Beauvoir Square. Metal roller shutters are located on the boundary with the factory to the rear. It is an unattractive and partially overgrown building that harms the character and appearance of the conservation area.

23. The proposed works and development would comprise a single storey ground floor with flat sedum roof above attached to, but set back from, the front of the neighbouring property at 80 Mortimer Road. A large lower ground floor is proposed, with access to the dwelling via steps down to that level at the front that would disguise the entrance door in views from the road. The appearance of the proposed dwelling would reflect features of the existing building at 80 Mortimer Road, including materials and arched window to the front. It has been designed to appear as an extension to the adjacent house, with front door at lower ground floor level.

24. The modest height of the proposed dwelling, combined with the set back from 80 Mortimer Road and the detailed design, means that the building would appear subservient to the existing building. In addition, it would not materially affect the symmetry of the semi-detached dwellings to which it would be attached, thereby protecting the rhythm of the street.

25. I note that the site of the proposed dwelling would differ from the original layout of the de Beauvoir Estate. However, it has acted as an access and storage area for the factory to the rear for a substantial period of time. Consequently, this is a historic subdivision and part of the evolution of the estate. Taking that into account, the layout of the development would preserve the character and appearance of the conservation area.

26. The proposed dwelling would be in close proximity to a number of trees that contribute to the character and appearance of the conservation area. These include a tulip tree in a neighbouring rear garden. The existing boundary wall separates the tree from the site and I accept that works to strengthen that wall, including extending the foundations, would be in close proximity to the tree. Nevertheless, I am satisfied that the tree would be protected by an appropriate condition such that the works are unlikely to lead to the removal of the tree in the future.

27. As a result, the proposed dwelling would preserve the character and appearance of the De Beauvoir Conservation Area and would not harm its significance as a heritage asset. As such, it would comply with Policies 7.4, 7.6 and 7.8 of the London Plan, Policies LP1 and LP3 of the LP and the Framework that seek the highest architectural and urban design quality that respects and complements historic character, and that development should preserve or enhance the character and appearance of the conservation area.

Living Conditions

28. The Technical Housing Standards – Nationally Described Space Standard (NDSS) and Policy 3.5 of the London Plan require a minimum gross internal area for dwellings. In this case, the proposal is for a one bedroom dwelling over two floors. If the dwelling were providing accommodation for up to two people, the minimum size set in the requirements would be 58sq.m., but it would be 39sq.m. for single occupancy.

29. It is clear that the size of the dwelling does not meet the minimum for a two person property. However, it is sufficient to meet the minimum for single person occupancy. In addition, it would be a light property with significant areas of glazing to the front, rear and roof. Views from the property would be restricted such that there would be limited outlook, although that would be mitigated to a large extent by the amount of glazing. It would be a modest, deep and narrow property with limited storage space, but would not be cramped. In addition, there is a modest private outside area available for use by occupiers. Taking all of these factors into account, it would provide an adequate space to meet the needs of future occupiers.

30. I note that the layout of the property would have stairs to the entrance door at the front, stairs to access the ground floor bedroom and spiral staircase to access the garden. However, I understand that these can be constructed to result in an accessible and adaptable property in accordance with Building Regulations Optional Requirement Part M4 (2). This will be required by condition.

31. For these reasons, I conclude that the proposed development would provide adequate living conditions for prospective occupiers. As such, the proposal would not conflict with Policy 3.5 of the London Plan, Policies LP2 and LP17 of the LP or the NDSS that seek all homes to be of high quality design both internally and externally, including meeting internal space standards.

Other matters

32. The proposed dwelling would result in an increase in the height of the wall to the rear of 23 and 24 de Beauvoir Square. These dwellings have modest gardens. However, the wall would be viewed with the significantly taller 80 Mortimer Road in the background, such that it would not dominate these gardens or cause material harm to the living conditions of occupiers of those neighbouring dwellings by reason of outlook.

33. The proposal would contribute a single dwelling to supply of homes. This is a modest contribution that would carry limited weight in support of the proposal. The Council have suggested a condition requiring the dwelling meet the optional Building Regulations standard M4(2) relating to accessible and adaptable dwellings and the appellant has confirmed that the dwelling could be constructed in accordance with that if this were required by condition. The proposal would include the provision of solar panels and a green roof that I have taken into account in coming to my decision.

34. In addition to the contribution toward affordable housing, the UU submitted under S106 would provide carbon offset and monitoring financial contributions. The UU would ensure the development is registered with the Considerate Constructors Scheme and constructed in accordance with the Code of Considerate Practice. In addition, it ensures this would be a car free development. These contributions seek to meet the requirements of Policies LP2, LP45 and LP55 of the LP that seek to protect the living conditions of occupiers of neighbouring properties, provide car free development and mitigate climate change, including through carbon off-setting payments. As a result, these elements of the UU meet the requirements of LP policies but would be no more than is necessary to meet needs arising from the development. They are therefore a neutral factor in the overall planning balance.

Conditions

Appeal B

35. A condition shall be imposed to address the period for commencement, to meet legislative requirements. I shall also impose conditions for the following reasons. A condition specifying the relevant drawings is necessary to provide certainty. A condition detailing the mortar and pointing is necessary to ensure the works conserve the listed building.

Conclusions

Appeal A

36. For the reasons given above and taking all matters into account, I conclude that the proposed dwelling on land adjacent to 80 Mortimer Road would be contrary to the relevant policies of the Council's development plan. Whilst there are a number of material considerations in favour of the scheme, they mostly relate to the basic requirements of development plan policy and are not of such weight, either individually or cumulatively, as to warrant a decision other than in accordance with the aforementioned development plan. Consequently, the appeal under section 78 of the Town and Country Planning Act 1990 is dismissed.

Appeal B

37. In relation to the listed building consent appeal and for the above reasons, taking into account all other matters raised, I conclude that the proposed dwelling on land adjacent to 80 Mortimer Road would comply with relevant policies of the development plan and this appeal should succeed.

AJ Steen

INSPECTOR

Schedule of Conditions

Appeal B: APP/U5360/Y/20/3245281

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 28110001, 80-17-01 Rev B, 80-17-02 Rev D, 80-17-03 Rev D, 80-17-04 Rev D, Metal Balustrade Detailed Drawing 1:25; Details of Doors, Windows and Mullions prepared by Mumford Wood.

3) The works of repair to the listed wall to the north of the site of the site shall be undertaken using a lime based mortar (1 part lime to 3 parts sand) for all bedding, jointing, pointing and rendering. Cement based mortars and mortar mixes containing Portland Cement or other cementitious material shall not be used. The brick bond shall be as existing. Pointing shall be slightly (3mm) recessed and not ribbon or weatherstruck pointing.