



Appeal Decision

Site visit made on 26 March 2021

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2021

Appeal Ref: APP/U5360/W/20/3251526

91 Lower Clapton Road, Hackney, London E5 0NP

- 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 JDZ Estates Ltd against the decision of London Borough of Hackney.
 - The application Ref 2020/0497, dated 10 February 2019, was refused by notice dated 09 April 2020.
 - The development proposed is 'change of use of part A1 retail at ground floor rear to provide 1 x 2 bedroom flat. Demolition of roof terrace and creation of new mezzanine floor and new roof, new windows to ground floor rear and new bike and bin store. Retention of metal fence to rear'.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of part A1 retail at ground floor rear to provide 1 x 2 bedroom flat. Demolition of roof terrace and creation of new mezzanine floor and new roof, windows to ground floor rear and new bike and bin store. Retention of metal fence to rear' at 91 Lower Clapton Road, Hackney, London E5 0NP in accordance with the terms of the application, Ref 2020/0497, dated 10 February 2019, subject to the conditions set out in the attached schedule.

Application for Costs

2. An application for costs was made JDZ Estates against London Borough of Hackney. This application is the subject of a separate Decision.

Procedural and Preliminary Matters

3. The Appellant
4. The description of development was amended following submission of the application and the new description better reflects the development proposed. As such, I have referred to the amended description for the purposes of this appeal.
5. The London Plan 2021 (LP 2021) was published on 1 March 2021 and is now part of the Development Plan. The Council's decision notice referred to the previous London Plan. I am satisfied that the equivalent policies in the new plan have broadly the same approach as their counterparts, and they do not alter my conclusions on the matter in any case.

6. The Council determined the planning application in April 2020 and subsequently adopted the Hackney Local Plan 2033 (LP33) in July 2020. The policy documents referred to in the Council's decision notice, including Hackney Central Area Action Plan (HCCAP) 2012, Hackney Core Strategy (CS), adopted 2010, and Policy DM9 of the Hackney Development Management Local Plan (DMPL), were replaced by the policies of the LP33.
7. The parties were given the opportunity to provide further comments in respect of the relevant policies of the LP 2021 and the LP33. Only the Appellant's agent responded to this request. The Council was provided with a copy of the Appellant's response.
8. A previous iteration of the appeal scheme was dismissed at appeal (ref. APP/U5360/W/16/3144837) in June 2016. Limited information relating to that scheme is before me. The main differences from that appeal scheme to this seem to be internal layout, neighbour access to the outdoor amenity space and a supporting retail viability assessment (RVA).

Main Issues

9. The main issues are:

- The effect of the proposal on the vitality and viability of Lower Clapton Road as part of the Hackney Central Major Town Centre; and,
- Whether the proposal would provide satisfactory standards of living conditions for future occupants, particularly with regard to privacy and outlook.

Reasons

Vitality and viability

10. The appeal site is a three-storey mid-terrace building comprising a ground floor retail unit, with residential use above. The appeal scheme proposes to subdivide the retail unit to create a two-bedroom flat to the rear. The subdivision has taken place, not in accordance with the proposed details. My visit coincided with national restrictions on the opening of non-essential retail businesses as part of the Government's COVID-19 response; the subdivided retail unit was occupied by a picture framing business, which was open for 'click and collect' services. As a result, I was able to view the full extent of the retail unit from the front door.
11. The parties disagree as to whether the appeal site was within the Hackney Central Area and primary or secondary shopping frontages for the purposes of the superseded Development Plan. The 2016 appeal decision letter considered the site within the Lower Clapton Road Local Shopping Centre. The policies referred to have been replaced by the LP33. The site is located within the designated Hackney Central Major Town Centre and is within a secondary shopping frontage, as defined by paragraph 9.8 of Policy LP33 'Hackney Central and Dalston' of the LP33 and the related Interactive Policies Map.
12. Policy LP33 defines primary and secondary frontages, however, it anticipates the loss of class A1 units to other uses. As the scheme seeks to retain a class A1 use of the remainder of the unit, rather than replace it with another use, the aims and related requirements of this policy do not apply to the appeal

scheme. Nonetheless, Policy LP33 is the closest equivalent policy to those cited by the Council in its reasons for refusal. Policy LP33 allows for changes of use from retail in secondary shopping frontages only in circumstances where:

- The proposal will not result in the equivalent of a group of three or more adjoining standard size shop units within a parade being in non-Class A1 use and,
- Individually or cumulatively the development will not have an adverse effect on the vitality or viability of the centre as a whole and/ or on the individual shop unit; and,
- A shop front and active frontage is provided and
- The proposal is for another A class use.
- Paragraph 9.8 of the policy's explanatory note states that in the secondary shopping areas, a diversity of uses that complement the main shopping function of the centre will be permitted, provided the proposal meets the requirements of section G of the policy. Section G allows for a change from Class A1 retail where it can be demonstrated through at least one year's marketing that there is no realistic prospect of the unit being used for Class A1 retail.

13. Since the remaining unit would remain in a class A1 use, the scheme would not result in three or more units being in non-A1 use. The scheme would retain a shopfront with an active frontage and does not propose an alternative use.
14. Policy LP37 of the LP33 relates to the creation of small and independent shops. Supporting paragraph 9.16 states subdivided retail units to allow for new residential uses at the rear can sometimes result in 'token' retail units which are too small for the requirements of occupants. Policy LP37 therefore requires that the function of the unit will not be materially altered (that the floorspace of the remaining retail unit is sufficient to allow its continued operation as a shop or other town centre use) and the future viability of the unit and centre will not be harmed. To some extent, policies LP37 and LP33 overlap in that they seek to ensure the future viability of the unit and the area, although LP37 does not refer to the Section G marketing requirement. It is logical that the Section G requirements do not apply to policy LP37, as the policy does not anticipate the loss of a class A1 use, merely its subdivision. Policy LP37 therefore applies to the circumstances of this appeal.
15. Previous concern regarding the reduction in size of the retail unit is understandable, particularly given the loss of storage space. However, LP33 does not define a 'standard' shop size and the retail units on Lower Clapton Road appear to vary in size. The original appeal site unit appears to have been larger than some nearby units and despite opening restrictions, I observed few vacant units. As such, smaller units appear to function well within the area. Whilst storage space has been lost, the unit retains a reasonable floorspace, which allows for storage creation and retail. Indeed, the current retail use operates on an open plan format and includes a framing workshop and storage area to the back and retail space to the front. Further, the continued viability of the unit is evidenced within the RVA and by a ten-year lease for the retail unit.
16. For these reasons, the appeal scheme would not erode the future viability of the unit or the surrounding secondary shopping frontage and complies with

policies LP33 and LP37 of the LP33, policy SD6 of the LP 2021 and National Planning Policy Framework (Framework). These policies seek, amongst other things, to promote and enhance the vitality and viability of London's varied town centres and shopping areas.

Living Conditions

17. An open plan kitchen and living area would be situated at a first-floor mezzanine level. The bedroom accommodation would be situated at ground floor level and would have limited outlook due to the proximity of the boundary fence surrounding the private amenity yard. However, the bedrooms would provide a light environment and, as a whole, the flat would achieve varied outlook with a good degree of outlook from the main living area.
18. Occupiers of neighbouring properties gain access through the rear yard via an entry-controlled metal fence at the end of the passage. This arrangement would not provide a good degree of privacy for future occupiers of the flat. The Appellant has confirmed no right of way exists and those neighbouring occupiers can also gain access to their properties via Clapton Passage to the north of the site. The appeal scheme proposes a fence, which would prevent any third-party access across the yard and would overcome such concerns relating to privacy.
19. For these reasons, the appeal scheme would provide an adequate standard of living conditions for future occupiers of the development, in accordance with policies LP2 and LP17 of the LP33, policies D3 and D6 of the LP 2021 and the Framework. These policies seek, amongst other things, well designed development which provides good standards of residential amenity.

Conditions

20. I have imposed standard conditions to ensure the development is carried out in a timely manner, in accordance with the approved plans. It is necessary to impose further conditions requiring the erection of the boundary fence and to ensure additional fences are prevented. The Council also suggested further overlapping conditions relating to submission of details for external material and fenestration to be used in construction; conditions are justified given the location of the site and details already provided on the approved plans. I have included conditions which require the cycle and bin storage arrangements to be in place.

Conclusions

21. For the reasons given above, I find that the appeal proposal would not adversely impact the future viability of the retail unit nor the viability and vitality of the shopping area, and it would provide adequate living conditions for future occupiers of the development. The proposal therefore complies with the relevant policies of the development plan and the appeal is accordingly allowed.

Kim Langford Tejrar

INSPECTOR

Schedule of Conditions

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: 2250.04A, 2250.04C, 2250.05 and 22.50.05A. The external surfaces of the development hereby permitted shall be constructed in the materials shown on plan no. 2250.05.
3. Notwithstanding condition two (2), no development relating to fenestration shall take place until details of all external fenestration (windows and doors) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
4. Prior to the first occupation of the residential unit, secure bicycle parking shall be provided within the site in accordance with the details in plan 2250.04C. The bicycle parking shall thereafter be maintained and kept available for the secure parking of bicycles.
5. Prior to the first occupation of the residential unit, bin storage shall be provided within the site in accordance with the details in plan 2250.04C. The bin storage shall thereafter be maintained and kept available for the secure storage of refuse bins.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls other than those shown on the approved plans listed above shall be erected within the curtilage of the residential unit.
7. Notwithstanding condition two (2), details of the boundary fence to prevent third party throughfare access across the site shall have been submitted to and approved in writing by the local planning authority and development shall be carried out in accordance with the approved details prior to the first occupation of the residential unit. The boundary fence shall thereafter be retained and maintained to secure the site against throughfare third party access.