



Appeal Decision

Site Visit made on 5 May 2021

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2021

Appeal Ref: APP/E5900/W/20/3259932

59 - 61 Roman Road, London E2 0QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant subject to conditions of consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Mr Magri of Magri Developments Ltd against the decision of the London Borough of Tower Hamlets.
- The application Ref PA/19/00737, dated 4 April 2019, sought approval of details pursuant to conditions Nos 5 and 9 of a planning permission Ref PA/15/01792 granted on 16 October 2015.
- The development proposed is additional storey to provide a new residential unit, change of use of existing first floor from office (B1) to two residential (C3) units, first floor extension and alterations to elevations.
- The conditions in dispute are Nos 5 and 9 which state that:
 - (5) *A scheme for sound insulation and noise control measures to the residential dwellings shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of any works. The sound insulation and noise control measures shall meet the requirements of the British Standard BS8233. The sound insulation and noise control measures shall be carried out strictly in accordance with the details so approved, shall be implemented prior to the first occupation of the buildings hereby approved and shall be maintained in perpetuity.*
 - (9) *The development hereby permitted shall not be first occupied until a scheme to secure the occupation of the site as a car-free development has been submitted to and agreed in writing by the local planning authority. The scheme shall make explicit that all occupiers of the development (not being holders of a disabled person's badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation) including all such future occupiers, shall not apply for or hold an on-street parking permit to park a vehicle on public highway at any time within the administrative district of the local planning authority. Any permit that is issued to or held by any occupant of the development shall immediately be surrendered to the local planning authority. The restrictions and requirements of the scheme shall apply to and be communicated to all future occupiers of the development including successors in title as well as any person occupying the premises as a tenant or licensee. The scheme shall be in place prior to first occupation of the development and retained in force thereafter.*
- The reason given for the conditions are:
 - (5) *To protect the amenity of the future occupiers from noise or disturbance in accordance with the requirements of policies SP03(2) and SP10(4a) of the Core Strategy 2010, and policy DM25 of the Managing Development Document (2013).*
 - (9) *To promote sustainable transport by reducing the need for car travel, and to reduce pressure for on-street car-parking in accordance with the requirements of policy SP09(4) of the Tower Hamlets Core Strategy 2010.*

Decision

1. The appeal is allowed and the details pursuant to conditions Nos 5 and 9 attached to planning permission, Ref PA/15/01792 granted on 16 October 2015

in accordance with the application, Ref PA/19/00737 dated 4 April 2019 and the plans submitted with it, are approved.

Background and Main Issue

2. In October 2015 planning permission was granted for construction of an additional storey to provide a new residential unit, the change of use of the first floor to residential use and extensions and alterations to the host property. The permission was subject to a series of conditions.
3. The application relates to the conditions for sound insulation and noise control (condition 5) and car-free development (condition 9). It appears from the evidence before me that details in relation to sound insulation and noise control has subsequently been agreed following submission of this appeal. I have no reason to take a different position and have dealt with the appeal on this basis. My reasoning therefore relates to Condition 9.
4. The appellant has produced a signed and dated planning obligation by Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990. The UU would restrict possession of parking permits for future occupiers in order to ensure a car-free development.
5. At the time of the site visit I noted that the development has been completed. The application has been submitted retrospectively and I have dealt with the appeal on this basis.
6. The Tower Hamlets Local Plan (2020) (THLP) has been adopted since the development was granted permission. I must make a decision based on the development plan at the time of my decision. I am satisfied that no main party has been prejudiced by my approach.
7. The main issue is whether or not the planning obligation produced would be effective in order to make the development acceptable.

Reasons

8. The UU includes a restriction on car parking permits for occupiers of the development resulting in a car-free development. It relies upon Section 16 of the Greater London Council (General Powers) Act 1974 and therefore is an effective mechanism to secure car-free development. This is because the wording of Section 16 does not require a restriction on land, but rather that an undertaking or agreement has a 'connection' with the land or property.
9. The Council contend that the UU is legally inaccurate. However, there is no evidence before me to substantiate their case. Whilst the Council advise that it has not been drafted using their standard template the UU includes the legislation under which it is made, binds all parties with an interest in the land, sets out the requirements and covenants, defines the site and is dated and duly executed. As such, I am satisfied that the UU serves to ensure that the development would be car-free by preventing occupiers from obtaining a parking permit.
10. Consequently, I conclude that the development accords with Policies D.ES9, D.TR3 and D.DH8 of the THLP and Policies T6 and D13 of the draft London Plan which, amongst other things, seek to mitigate noise and vibration from new development; to protect and where possible enhance or increase the extent of

the amenity of new and existing buildings and their occupants; manage noise by ensuring good design or mitigation and developments that are permit free in terms of on-street car parking.

Other Matters

11. There is no evidence before me to justify the Council's legal fees in relation to the submitted UU. In any event, this is a matter that falls outside of what I consider as part of this appeal and thus I have not taken this matter into account in its determination.
12. The Council may well have taken a similar approach to ensure other car-free developments. However, I have not been provided with any substantive details in relation to them. In any event, every appeal must be considered on its own merits, as I have done in this case. As such, I have given this matter negligible weight in coming to my decision.

Conclusion

13. For the reasons set out above the appeal succeeds.

B Thandi

INSPECTOR