
Appeal Decision

Site visit made on 25 November 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2021

Appeal Ref: APP/U5360/W/21/3274827

Land at Ridley Road & Colverstone Crescent, Hackney E8 2LG

- 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 Tang (Harvest Properties) against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2020/3496 is dated 13 November 2020.
 - The development proposed is Erection of a three storey building comprising commercial (A2 use) floorspace at ground floor and 1 x one bed flat at first and second floor levels (C3 use) including second floor terrace and storage for bikes and refuse.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matter

2. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council has submitted a statement which sets out its putative reasons for refusal. These constitute the matters of disagreement with the appellant, and they therefore form the main issues in this case.

Main Issues

3. The first main issue is the effect of the proposal on the enjoyment of users of the adjacent outdoor learning space at Colverstone Primary School with particular regard to sunlight. The second is the effect of the proposal on the character and appearance of the St. Mark's Conservation Area (the Conservation Area) and the setting of the Grade II listed Colverstone Primary School with particular regard to its detailing, materials, and rear elevation. The third main issue is whether suitable construction access could be provided taking account of the location of the site close to Ridley Road Market.

Reasons

4. The appeal site is a small, concreted slightly elevated piece of land at the junction of Ridley Road and Colverstone Crescent. Ridley Road Market is located immediately to the south, while an outdoor learning space serving Colverstone Primary School is immediately to the north. This space appears well provisioned, maintained, and used and indeed was in use at the time of my site visit on a November midweek morning.

Outdoor learning space

5. A daylight and sunlight study (DAS)¹ is included and makes an assessment with regard to potential loss of sunlight to the learning space as a result of the proposal in line with advice outlined within BRE guidelines².
6. The study concludes that the area of the learning space that would receive at least two hours of sunlight on 21st March would be reduced by 17.76m² from 119.51m² to 101.75m² out of a total area of 134.06m². This would leave a ratio of 0.85 and at least half the space would receive at least two hours of sunlight on 21 March. This suggests that the loss of sunlight is unlikely to be noticeable.
7. However, the document itself cautions that its numerical guidelines should be interpreted flexibly and its section on gardens and open spaces notes that different forms of open space will have 'different sunlighting requirements' and that it is difficult to suggest a 'hard and fast rule'.
8. Further, the guidance indicates that for critical areas it is suggested that a more detailed study of sunlighting potential be carried out. The guidance also advises that if a particular space (specifically referencing a school playground amongst other spaces) is only used at certain times of day or year it is instructive to plot shadows for those specific times. This would have provided more certainty as to the impact at times of the day and year when the area is most used.
9. The evidence indicates that the outdoor space provides an attractive outdoor area which is valued by pupils and which contributes positively to their learning. The site is located in a densely developed inner city location where outdoor space is likely to be at a premium. The availability of sunlight within the outdoor learning space is likely to increase its levels of appeal and use. Lesser levels of sunlight would have the opposite effect.
10. Given that the space is not large, is well used and considering the context of the location, the loss of sunlight identified within the study would therefore be significant in relation to the specific time of year identified. Given the limitations of the analysis, there may also be other times of the year when current levels of sunlight to the area would be severely constrained as a result of the proposal. The guidance notes that children's playgrounds have a particularly strong requirement for sunlight.
11. I therefore conclude on this matter that the proposal would have a significant adverse effect on the enjoyment of users of the adjacent outdoor learning space with particular regard to sunlight.
12. The proposal would conflict with Policy LP1 of the Hackney Local Plan (2020) (HLP) which amongst other things requires that development must promote good health by creating spaces which are inclusive and attractive.
13. Amongst other things, in relation to sunlight, Policy LP2 of the HLP 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 neighbours.

¹ Daylight and Sunlight Study Right of Light Consulting Chartered Surveyors May 2020.

² Site Layout Planning for Daylight and Sunlight, A guide to good practice, Paul Littlefair.

14. The supporting text to this policy suggests that BRE guidance will be used to make such assessments. Given the limited analysis that has been applied to the learning space where sunlight could be seen as critical, the proposal does not explore the guidance and impact as far as it could and therefore the proposal would not accord with this policy.
15. I have not found direct conflict with Policies D4, D5 or S3 of the London Plan (2021) (LP) which relate to good design, inclusive design and education and childcare facilities nor Policy LP8 of the HLP relating to social and community infrastructure.

Conservation area and listed building

16. The site falls within the Conservation Area. The scale, form, detailing and materials of its buildings are among the defining features of the character and appearance of this part of the Conservation Area.
17. The use of brick is common throughout the Conservation Area and it has been utilised extensively as the most common building material. The walls of the proposed building would be finished with clay hanging tiles, fish tail clay tiles and clay ridge tiles.
18. The use of these materials therefore differs from the predominant walling materials. However, the site is on the fringes of the Conservation Area and relates closely to Ridley Road, where materials are more mixed. Subject to details of the exact tiles to be used, which could be similar in appearance to brick, they would not be an unattractive material in their own right.
19. Their use therefore on a building of only modest scale in an area of mixed materials, including their use on the rear elevation, which would not appear unduly dominant, would not be unacceptable.
20. The proposals would not compromise the heritage significance of this part of the Conservation Area which sits in part with the scale, form, detailing and materials of its buildings. I therefore conclude that the proposal would preserve the character and appearance of the Conservation Area.
21. The site sits a short distance to the south of the Grade II listed Colverstone Primary School and currently has a blank appearance making a neutral contribution to the setting of the listed building. The visual characteristics of the setting in relation to the development site make only a limited contribution to the significance of the listed building.
22. The building, which would be of visual interest in its own right and set close to the rather blank side roof slope rather than the more detailed frontage of the school would also have a neutral impact on the setting of the building and I therefore conclude that it would preserve its significance.
23. I have not therefore identified conflict with policies LP1 and LP3 of the HLP in terms of the protection they offer heritage assets nor policies D4 and HC1 of the LP which relate to design quality and heritage conservation.

Construction access

24. The appeal site is located closely adjacent to Ridley Road Market. This would undoubtedly make access for vehicles carrying out deliveries of construction materials more problematic than in some other circumstances.

25. However, it should be possible to achieve access to the site along Birkbeck Road or Colverstone Crescent. It would be likely that some dialogue would have to take place with the market, but were I minded to allow the appeal there is nothing in the evidence to suggest that a suitable construction management plan could not be conditioned to address concerns in respect of this matter. In any event, impacts associated with construction are likely to be short lived and temporary.
26. I have not therefore identified conflict with policies PP2, LP32, LP33, LP40 or LP43 of the HLP which amongst other matters set out management strategies for the area and seek to protect the Ridley Road Market nor policies SD6, D13, E9 or T4 of the LP relating to Town Centres, agents of change, retail and transport impacts.

Other Matters

27. Evidence has been submitted which indicates officers would have recommended the scheme favourably were it to have been put before the Council's planning committee. However, this is not the position formalised by the Council within its statement which indicates that it would have refused the application and I subsequently afford this matter limited weight.

Planning Balance and Conclusion

28. The proposal would utilise a vacant site in a sustainable location which would provide commercial accommodation and a residential unit. However, the evidence indicates there would be a reduction in sunlight, which would be likely to make use of the outdoor learning space less attractive and therefore result in this valued area being lesser used. I have afforded this matter significant weight.
29. Material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

T J Burnham

INSPECTOR