



Appeal Decision

Site visit made on 29 March 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2022

Appeal Ref: APP/U5360/W/21/3279229

28 Clissold Crescent, Hackney, London N16 9BE

- 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 Patrick Watson against the Council of the London Borough of Hackney.
 - The application Ref 2021/1434, is dated 7 May 2021.
 - The development proposed was originally described as 'renewal of HMO Licence and internal remodel for 9 newly refurbished units'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of development in the banner heading above which is taken from the planning application form, the submitted plans illustrate that the building currently on the appeal site would be converted to a 12 bedroom House in Multiple Occupation (HMO). Comparison of the submitted 'existing' and 'proposed' plans also indicate alterations to the building including an extension altering the form of the existing mansard roof to the second-floor, and elevational alterations including an external stair at basement level. In notifying interested parties of the appeal, the Council described the proposal as 'elevational alterations, including erection of an external stair at basement level and addition of 2nd floor roof extension to facilitate conversion from an 11 bed HMO and a 1 bed self-contained unit into a 12 bed HMO'. Although phrased and ordered slightly differently, this essentially reflects the description given by the appellant on the appeal form. As both parties have referred to the development as comprising these elements, I have considered the appeal accordingly and having regard to the development as it is indicated on the submitted plans.
3. When the appellant submitted the appeal, the reason given was that the Council as the Local Planning Authority had failed to give notice of its decision within the appropriate period. Subsequently, the Council advised that it had not in fact validated the application. In response to the appeal, it suggested that it would have declined to determine the application, referring to an enforcement notice in effect on the site.
4. Section 70C of the Town and Country Planning Act 1990 (as amended) sets out that a local planning authority may decline to determine an application for planning permission if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to

which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control. The powers afforded under Section 70C are discretionary, but in any event, the Council confirmed that it did not formally decline to determine the application in exercise of its powers under Section 70C prior to the submission of the appeal. It has not therefore given notice to the appellant of its decision on the application within the prescribed period, and I have dealt with the appeal on that basis.

5. The Council maintains that planning permission can not be granted for a proposal which includes unlawful development that is the subject of an enforcement notice, but has not provided substantive evidence raising objections in relation to the planning merits of the appeal proposal. Nevertheless, the main parties have been able to respond to representations made by interested parties which do raise objections, and I have taken the comments made by the appellant into account. The main parties were additionally invited to comment specifically on the main issues that I identified having had regard to the evidence before me including the representations of interested parties and my observations at my site visit. While neither have done so, I do not consider that the interests of the main parties would be unfairly prejudiced by my consideration of the main issues below. I return to the subject of the enforcement notice within my Other Matters.

Main Issues

6. The main issues are (i) the effect of the proposal on the character and appearance of the area; and (ii) whether or not living conditions for future occupiers of the development and the occupiers of neighbouring dwellings would be acceptable.

Reasons

Character and Appearance

7. The appeal relates to a four-storey semi-detached property close to the junction of Clissold Crescent and Springdale Road. For the most part, other buildings in the vicinity of the site are terraces of matching designs. There are a few flatted blocks, but there is as a consequence an impression of a fairly high degree of uniformity to the street scenes overall. The semi-detached pair including 26 and 28 Clissold Crescent is of somewhat different form and appearance to these neighbours. Nevertheless, to the front part of the building, Nos 26 and 28 include similar mansard roof forms to one another; and they have consistent external materials and architectural detailing and corresponding albeit mirrored fenestration designs and patterns to the storeys below. Despite differences to the rear of the properties including a substantial four-storey extension to the rear of No 28, this provides for an attractive sense of symmetry to the pair when viewed from Clissold Crescent, and they sit comfortably against the generally more uniform surrounding development.
8. The proposed roof extension would alter the form of the existing mansard roof to the front part of the appeal building. Although the increase in the scale of the building would be fairly small, the proposal would increase the angle of the lower slope while reducing the angle of the upper slope, and would cause the roof of the appeal building to project conspicuously forward of No 26's front roofslope. In my judgement, the resulting contrast in the proportions and the

angles of the slopes of the roofs to No 26 and No 28 would be discordant and visually striking. In addition, the parapet to the front of the appeal property would be lowered. While the eaves to either side of the building would remain of comparable height, I find that the step down from the retained parapet to No 26 would be awkward and jarring. These factors in combination would unbalance the building, harmfully eroding the remaining visual unity of the semi-detached pair. Irrespective of the use of external materials to match the existing building, I find as a consequence that the proposal would result in an incongruous and prominent feature that would detract from the character and appearance of the host building and area.

9. The visual impact of the other alterations including the external stair would be limited, and I am satisfied that these elements of the proposal would be generally sympathetic to the host property and area. Nevertheless, I conclude for the above reasons that the proposal would cause unacceptable harm to the character and appearance of the host building and area. It would therefore conflict with Policy LP1 of the Local Plan 2033 adopted 2020 which the appellant has drawn to my attention and which requires, amongst other things, that development is of the highest architectural and urban design quality and that it responds to local character and context.

Living Conditions

10. The proposal would increase the number of HMO bedrooms from 11 to 12, but the existing self-contained unit would be removed. It therefore seems to me that the potential level of occupation of the building would not be significantly increased such that there would be likely to be a meaningful uplift in noise or disturbance that would be detrimental to the living conditions of neighbouring occupiers.
11. Given the relationship of the building with its neighbours and the scale of the proposed alterations, I am satisfied that the development would not cause unacceptable loss of light or outlook to neighbouring occupiers. The extended roof would include 3 rooflights facing towards 30 Clissold Crescent, but views would be similar to those already available from the existing rooflights to the side of the building. While they would be slightly closer to the boundary, I do not find that they would cause a harmful loss of privacy. Views from a proposed basement level door and altered window to the side of the basement would also be little different to the existing window and a ground floor door that would be removed, and would not cause unacceptable overlooking.
12. The proposed rooms within the development would be of reasonable size, with communal spaces and space for storage provided, and access to outdoor space in the form of balconies and the rear garden. The majority of habitable rooms would be served by windows to the front or rear of the building providing for light and outlook. Some bedrooms would be served by windows to the side of the building, and the second floor lounge and kitchen would be served by a rooflight, but for the most part this would reflect existing arrangements within the property. In this context and from the evidence that is before me, I do not find that the standard of accommodation provided would be inadequate.
13. For these reasons, I conclude on this main issue that living conditions for future occupiers of the development and the occupiers of neighbouring dwellings would be acceptable and I find no conflict with Policies LP2 or LP22 of the Local Plan. Amongst other things, these policies include requirements broadly that

development does not adversely impact the amenity of occupiers and neighbours, and that HMOs should provide a good standard of accommodation and rooms and communal spaces of high quality and adequate size.

Other Matters

14. I have no compelling reason to find that the proposal would conflict with Policy LP22 of the Local Plan which generally supports HMOs subject to compliance with certain criteria. I also note supporting text to this policy referred to by the appellant which highlights HMOs as an important part of Hackney's housing stock. Be that as it may, the main parties indicate that the property already provides for an HMO, and while there would be an additional HMO bedroom and I have found that the accommodation provided would be of suitable size and standard, an existing self-contained unit would be lost. The contribution that the proposal would make overall to meeting the requirement for residential accommodation in the area through development of a brownfield site would accordingly be limited, and I do not consider that it would outweigh the harm that would be caused to the character and appearance of the host building and area.
15. I acknowledge that the existing building was in somewhat poor condition at the time of my visit, but it did not detract significantly from the overall street scene, and I consider that any enhancement to the condition of the building would have only limited visual impact. Moreover, no firm evidence has been provided to demonstrate that the building could not be renovated or refurbished in the absence of the appeal proposal which further limits the weight that I afford to this factor.
16. Although the appellant advises that an earlier enforcement notice issued on 27 March 1991 was subsequently quashed, they do not dispute that the appeal property is subject to an enforcement notice issued on 11 November 1992 ('the EN'). The breach of planning control alleged in the EN is: Without planning permission, the erection of a four storey rear extension. On appeal¹, sub paragraph (c) of paragraph 5 of the EN was varied before the notice was upheld. As varied, the EN broadly required within 6 months of the appeal the demolition of the second floor and balcony of the rear extension; the reinstatement of the rear wall and provision of a roof to the remaining rear extension to first floor level in accordance with specifications outlined within the EN; and the removal from the land all materials of the second floor and balcony of the rear extension not reused.
17. The appellant asserts that the basement, ground and first-floor levels of the rear extension are lawful by virtue of the passage of time. Even if that is the case, I saw at my visit that the second floor and balcony of the rear extension remained in place, and I have not been provided with evidence to indicate that the EN is no longer capable of taking effect. The proposed plans show that the development includes 2 bedrooms (bedrooms 11 and 12) in the part of the building subject to the EN with access from bedroom 11 to the balcony. However, given my findings on the main issues and that I am dismissing the appeal for other reasons, it is not necessary for me to consider any effect of the EN further as part of this appeal as it could not alter my decision.

¹ Appeal ref T/APP/C/92/05360/626276

Conclusion

18. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR