



Appeal Decisions

Site visit made on 28 July 2022

by Alison Scott (BA Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2022

Appeal A Ref: APP/U5360/W/21/3283073

10 Wilderton Road, Hackney, London N16 5QZ

- 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 Mr J Khubani against the decision of London Borough of Hackney.
 - The application Ref 2021/1254, dated 23 April 2021, was refused by notice dated 13 July 2021.
 - The development proposed is Retrospective change of use of part of existing building from residential (C3) to synagogue F1(f), conversion of upper floors to 1no. three bedroom flat.
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Appeal B Ref: APP/U5360/W/21/3283074

10 Wilderton Road, Hackney, London N16 5QZ

- 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 Mr J Khubani against the decision of London Borough of Hackney.
 - The application Ref 2021/1278, dated 22 April 2021, was refused by notice dated 28 July 2021.
 - Change of use of part of existing building from residential (C3) to synagogue (F1(f)) accompanied with a single storey basement extension and single storey rear extension and conversion of upper floors to 1no. three bedroom flat.
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Decision

1. Appeals A and B are dismissed.

Preliminary Matters

2. Both Appeals A and B relate to a change of use of a residential C3 dwelling to a religious venue. Appeal A relates to up to around twenty five visitors at any one time to the building whilst Appeal B would accommodate approximately seventy five people at any one time, together with extensions to the building. Outside arranged religious services, the building would also be used by pairs of men for study. This would be up to around twenty-five people for appeal A or about forty for Appeal B, although the appellant stipulates between 10-15 people would be in attendance at the earliest and latest parts of the day.
3. From my visit to the site, I can confirm that a change of use of the building to a religious venue has occurred.
4. The appellant has provided amended plans with both appeals. These illustrate the inclusion of internal lift platforms. No further details have been provided. In the absence of more precise technical information, and as no parties have been

formally consulted, they would be unduly prejudiced by me accepting these amended plans. Therefore, I have discounted them as part of my assessment.

Main Issues

5. The main issues with regards to the appeals are as follows:

- Whether or not the scheme provides access for everyone;
- Whether or not there would be a change in residential character to the local area;
- Whether or not there would be a highway safety danger to the local area;
- With regards to Appeal B only, the effect of the proposal on the character and appearance of the street scene with regards to the extensions; and
- With regards to Appeal B only, whether or not there would be a harmful effect on street trees as a consequence of the proposed extensions.

Reasons

6. The appeal property is an extended three storey end of terrace dwelling located on the corner with Wilderton Road and Colberg Place with the opposite corner dwelling mirroring one another. Both have lengthy rear gardens before houses of the return street of Colberg Place begin. Overall, the local area is made up of a dense pattern of streets of residential housing. From my visit I could see no evidence of local amenities or services within close quarters to the appeal site, but rather a tight grain of traditional terraces of Victorian houses.
7. As with both Appeals A and B, the upper floors would be given over to a residential flat with its own independent access proposed from Wilderton Road. An existing side gate along Colberg Place provides access to the garden and a new door is proposed to the gable end of the building for both Appeal A and Appeal B.
8. The appellant confirms the use of the building for both prayer as a synagogue and study facility for the small Yemenite Jewish community within the Hackney area. A religious venue as such is commonly considered as a community facility.

Accessibility

9. With regards to both appeals A and B, it has been explained to me within the submission that the layout is dictated by segregation between men and women to which I am mindful of as part of my assessment.

Appeal A

10. Turning to Appeal A, the existing ground floor level and basement area has been converted for use as a synagogue with the Shul to the ground floor and study room within the basement.
11. The submitted Operational Management Plan (OMP) sets out the timetable for weekday services. This is detailed as a minimum of seven services per week, excluding other religious festivals and festivals throughout the calendar year. In addition, the study space would be occupied for learning by young men

outside formal meetings, seven days a week with the building open from 07:00 until 00:00 every day of the week.

12. Internal stairs are required to access both the basement study room and the Shul due to the proposed layout of the development. These would be very restrictive to the less abled bodied person to gain access to these spaces.
13. I appreciate the sensitivities of the Jewish culture, with their religious beliefs preventing the use of things of a mechanical nature at Shabbos in particular. Therefore, as the appellant explains, the use of a mechanical platform lift as a means to provide level access would not be an option to access specific spaces during this event.
14. Although the restrictions of Shabbos are a material consideration, that is however not to say that the intervention via means of mechanical forms of access cannot be used to provide level access at all other times. Indeed, the appellant has provided no alternative forms of level access for me to consider, or demonstrate how other internal layout arrangements would not be feasible.
15. As it would be a community use with a reasonably significant number of comings and goings of visitors, the lack of level access would prejudice the less able-bodied person from gaining access to the site. In addition, whilst its use would be solely to provide a religious venue for this particular Jewish population, that is not to say that they alone as a group would require access to the building. As a community building, it should be made accessible to all. Therefore, as a whole, the site would not lead to inclusive design.

Appeal B

16. With regards to Appeal B, access to the basement would be via steps from pavement level. A new internal staircase leading from the basement to the first floor would be required. No means of level access within the building is proposed which would be intended to accommodate a significant number of people at any one time. Therefore, as I have found with Appeal A, the development would not provide level access for everyone as a community building.
17. To conclude on this main issue, the lack of level access would not be inclusive for all and thus not conducive to acceptable design, therefore contrary to policies S1 and D5 of the London Plan and the inclusive design aims of policies LP1 and LP8 of Hackney's Local Plan. However, I find no direct relevance to Policy T6 of the London Plan 2021 as this relates to car parking.

Change in character of local area Appeals A and B

18. With regards to both appeals, the daily services could be up to as many as five or six according to the OMP. Some timetabled activities would occur at 22:30 in midsummer. From the scheduled activities listed within the OMP, there would be a steady flow of activity generated from footfall into and out of the building every day of the week with additional activity at the site up until midnight.
19. In addition, Appeal A would generate study for approximately twenty to twenty-five young men outside religious services throughout the time the venue would be open. There is no evidence presented as to how their particular patterns of comings and goings would be organised. Appeal B would entail a greater capacity of visitors to the building with the proposed at a maximum of

- about seventy five people attending at any one time. The number of men to study at the site would be up to around forty.
20. As with both appeals, a combination of activities would occur at the site and I can only come to the view that the regular comings and goings would lead to an intense use of the site generating a level of activity and subsequent noise and disturbance to the local area. This would be especially noticed late into the night when a level of quiet would be reasonably expected.
21. In addition, other religious services would be timetabled throughout the religious calendar year. The appellant draws my attention to the use of the Shul would occur 'all night for reading of the Torah' during the Shavuot festival. There is no evidence of how the comings and goings would be managed to reduce noise and disturbance to the local area that would be generated as a consequence. Furthermore, there is no evidence presented that the private vehicle would not be used to access the site outside times that does not restrict the use of mechanical modes of transport, irrespective of how close the visitors live. An intensification of vehicles on the local road network would inevitably arise.
22. As a mode of transport, this would generate noise and disturbance from the sound of engines, radios, car doors closing. The hours of use of the venue would mean this noise would occur late into the evening. There is no information presented as to how the level of activity would be managed.
23. As a whole, due to frequency of services and their occurrence late into the evening including the unspecified patterns of people coming and going to study, would lead to an intense use of the site. This level of activity would be well above that associated with a typical residential dwelling.
24. Even though the appellant expects visitors not to linger around the building, this cannot be reasonably controlled. The use of signage, CCTV and an appointed senior member would not be sufficient to control the behaviours of users to the building.
25. The people who occupy an area are part and parcel of its character and this area is residential in context. They should however not be subject to adverse effects due to the intensive use of the building as both a combination of study and place of worship.
26. Therefore, I have found that both appeals would generate a discernible level of activity at the site well over and above what would normally be expected at a residential dwelling in this suburban location. Therefore, it would have an adverse impact upon the residential character of the local area contributing to a detrimental change to this otherwise residential nature.
27. To conclude on this main issue, the proposal by virtue of its intense use would result in a form of development with undue levels of noise and disturbance arising, detracting from the established residential character of the local area. Therefore, the proposal would be contrary to policy D3 of the London Plan as it would not respond to local character, or policy LP2 of the Hackney Local Plan 2033 in so far as it would not be appropriate to its location.

Character and appearance of street scene by virtue of impact of extensions - Appeal B

28. At Appeal B, a considerable amount of development would be involved including a subterranean level for use as the Shul, as well as a rear extension for a 'woman's gallery'.
29. The ground floor extension would be very large and uncharacteristically out of proportion to the size of the existing property. The corner location of the site provides more exposure to its rear elevation as it is seen from several public vantage points. This extension would appear visually obtrusive to the character of the host property.
30. The basement extension would extend into the majority of the garden area. The Council's Residential Alterations and Extensions Supplementary Planning Document (SPD) also considers development of a residential nature that are now in another use. Whilst strictly speaking, the current use does not benefit from planning permission, I have taken into account the advice within the SPD to which I afford considerable weight.
31. The basement extension would extend virtually the full length and width of the garden space. It would be out of scale with the host property with the insertion of a fire escape staircase also out of character with this otherwise residential setting.
32. To the front elevation, a main entrance door at basement level has been proposed to the bay window within its centre as another means of access into the building. Whilst I appreciate the need for segregated access, the door would appear out of character in a street scene where lower ground central windows are in existence to bay windows, with a small side entry door a feature of the street scene. The new entry point from street level through the boundary enclosure would also appear out of character here.
33. The Council does not identify harm arising to the living conditions of local residents by virtue of the extensions proposed. I have no reason to disagree with these findings. However, this is neutral in the overall consideration of the effect of the proposal to the character of the street scene, and neither weighs for or against it.
34. The appellant points to other local religious venues with extensions. However, there are no precise details submitted for me to take into account.
35. Overall, the combination of extension elements proposed would adversely harm the appearance of the host building and the street scene to which it would be experienced within.
36. To conclude on this main issue, the mass of development proposed to the rear of the building would appear out of scale with the host dwelling, taken with the alterations to the front would detract from its character, and the wider street scene, contrary to the design aims of policy D3 of the London Plan 2021 and Policy LP1 of the Hackney Local Plan 2033.

Highway safety

37. I understand the necessity not to use forms of mechanical transport during Shabbos, although there is nothing to prevent people from arriving at site via

- motorised means beforehand, or coming back to collect vehicles once they are allowed.
38. I am also aware of the Council's reference to Transport for London recommendations of walking distances and walkable catchment areas which differ from the appellant's view that members 'live within walking distance' whom they comment they live within around 2000m of the appeal site.
39. The Transport Statement explains that the proposal would not lead to additional trips on the public highway or the operation of the local road network. However, there is nothing before me to demonstrate that private vehicles would be precluded from being used to access the site at all other times outside Shabbos. An intensification of vehicles on the local road network would inevitably arise.
40. A car free development would not prevent people from arriving to site via the private vehicle. Furthermore, the PTAL for the local area is 4 and therefore only moderate in terms of access to public transport services. There are on-street parking restrictions within the local area by way of the requirement for parking permits for vehicles parked on local roads from Monday until Friday inclusive, 10am until noon.
41. The existing parking restrictions would afford limited control when the building is in operation as intensely proposed for both appeals. This would be especially prevalent given the number of scheduled activities within the building as well as the fact there are no specified patterns of comings and goings of study times. This would inevitably lead to an intensification of vehicular trips along the local roads network, and lead to stress on parking levels locally.
42. Dedicated cycle parking at the site would not mitigate the harmful effects of the proposal, nor would the use of a travel plan adequately mitigate the impacts of the proposal.
43. To conclude on this main issue, the use of the building would lead to a highway safety issue as a consequence of an intensification of vehicular trips to and from the site. Therefore, it would be detrimental to the safe and efficient functioning of the public highway contrary to the transport mitigations aims of policy T4 of the London Plan 2021 and LP43 of the Hackney Local Plan 2033.

Trees Appeal B

44. Street trees are located along Colberg Place and add aesthetic value to the public realm, identified by the arboricultural consultant to the appellant. Two trees, T2 and T3 are positioned close to the boundary with the appeal site.
45. Both a new wall as well as excavation below ground is proposed as part of the scheme at Appeal B. The specialist report comments that pollarding of T3 has occurred and 'thus promoting shrinkage of the root system and 'decline of the root system of tree 3 below the orthodox extent of the RPA is now likely to have occurred'. However, this does not conclusively evidence that the roots of T3 have not grown under the garden enclosure and would not be negatively impacted upon by the development. Without specific information on the matter, I cannot be certain that the proposal would not adversely impact upon the health of the tree.

46. Therefore, to conclude on this main issue, without conclusive evidence to demonstrate the street tree would not be adversely affected by the proposal, I cannot be certain it would not cause detrimental harm to the biodiversity and character of the surrounding area, contrary to the broad aims of policies LP46 and LP47 of the Hackney Local Plan 2033. However, I find no direct relevance to policies G5 and G6 of the London Plan 2021 as they are of a more strategic level.

Other Matters

47. The appellant complains about the Council's service throughout the planning applications process although this is a matter to be taken up with them directly and is not within my scope to comment upon.
48. The building may have been used as a Minyan although there is no evidence of this for me to take into account as part of my assessment.
49. Even if the proposed maisonette would be an acceptable size to meet Council standards, dual aspect and energy efficient, a flat could be created at the site without the other functions as proposed. There is nothing before me to substantiate their claim that the flat would be 'high quality'.

Planning Balance and Conclusion

50. Stamford Hill is recognised by the parties as requiring venues to support the Jewish population. The particular needs of the Yemenite community and importance of this building as their permanent religious venue is a material planning consideration as part of my assessment to which they explain there is an essential need. This is further reinforced due to their differences with other orthodox Jewish communities that they point to, and the fact that it is a growing community.
51. Also, as part of my assessment, I have had due regard to The Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The appellant is part of a group with protected characteristics for the purposes of the PSED. However, as a result, it does not follow that the appeal should necessarily succeed, but rather that I have a duty to consider the implications of my decision upon this group.
52. The community affected by the decision are united by their protected characteristics. I am conscious of their protected religious beliefs and I appreciate the value of the proposal to this specific community. Furthermore, the support to the proposals has not gone unnoticed.
53. I have found that the development would not lead to inclusive design to a community building and I apply significant weight to this and its conflict with policy in this regard. The comings and goings by visitors to the building would be continuous and late into the evening, combined with vehicular trips. In addition, the effect of vehicular movements on the local road network would add additional vehicles and lead to more parking stress locally. I apportion more than substantial weight to this conflict with Council policies on these grounds.

54. With regards to Appeal B, the extensions proposed would be harmful to the character of the host building and the street scene which should be safeguarded. Without further information of the implications of the proposal on a street tree, I cannot be certain it would not adversely compromise the tree and its aesthetic value to the local area. I apportion significant weight to this.
55. I accept that there will be an impact on those persons coming to the appeal site to engage in their religious practices. However, this has to be balanced with the impact that the proposal has on the local area. These can only be adequately safeguarded by a refusal of planning permission. No temporary consent for a two years permission would mitigate these harms.
56. Therefore, the proposals would thus lead to conflict with the development plan when taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. In this case, for the reasons given, I conclude that Appeals A and B should not succeed.

Alison Scott

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/U5360/W/21/3283073	Mr J Khubani
Appeal B	APP/U5360/W/21/3283074	Mr J Khubani