



Appeal Decision

Site visit made on 16 August 2022

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2022

Appeal Ref: APP/U5360/W/21/3287346 R/O 38 Chatsworth, London E5 0LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Woodside Developments against the decision of the London Borough of Hackney.
 - The application Ref 2021/1270, dated 23 April 2021, was refused by notice dated 1 October 2021.
 - The application sought planning permission for one 2 storey, 2 bedroom, four person house with basement accommodation with associated boundary and landscaping details revised following refusal of application 2016/2606 without complying with a condition attached to appeal reference Ref APP/U5360/W/17/3186486, dated 1 June 2018.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: location plan; 900/16/01 Rev A; 900/16/02 Rev B; 900/15/03; 900/16/04 Rev B; 900/15/05; 900/16/07 Rev A; 900/16/10 Rev B; 900/16/20 Rev A.
 - The reason given for the condition is certainty.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was originally submitted as a request for full planning permission for 'a single storey extension to the basement level of the already approved proposal Ref APP/U5360/N/17/3186486'. However, the Council asserts that as the development was not substantially complete at the time, therefore the proposal did not constitute an extension to an existing development. Consequently, a S73 application form was requested and provided.
3. The application considered by the Council was based on the revised application form. Moreover, their decision notice refers to the 'variation of condition 2 attached to planning permission APP/U5360/W/17/3186486 (Council ref. 2017/0457) allowed at appeal on 01/06/2018. The effect of the variation is to increase size of the approved basement and alter the entrance arrangement'. Notwithstanding the appellants answer to question F of the appeal form, they also refer in answer to question E to a variation of condition 2. Consequently, I have treated the appeal as being one against a refusal to vary a condition. Given the comments received I do not consider this approach prejudices either of the main parties.

4. On my site visit I saw that the development, including the enlarged basement, was substantially complete.

Main Issue

5. The main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring properties.

Reasons

6. The appeal site lies to the rear of No 38 Chatsworth Road. No 38 is a mid-terrace property with a ground floor commercial use fronting Chatsworth Road. It contains flats in the basement, to the rear of the ground floor, and on the upper floors.
7. The enlarged basement lies approximately 5.3m distance from the rear wall of the basement flat at No 38 and is approximately 2.7m high. It occupies space that was previously identified as being part of an open courtyard and is directly opposite windows that serve habitable rooms of the flats.
8. I have taken into account the Daylight and Sunlight Assessment (December 2016), carried out by the appellants, which indicates that all habitable rooms to neighbouring properties meet BRE criteria with regards to daylight. However, in this regard, I note that the assessment was carried out relative to the approved development and has not been updated to reflect the enlarged basement development. That said, from what I have read and saw on my site visit, I find that the basement enlargement does not result in a significant reduction in daylight entering the habitable rooms of the basement flat, when compared with the approved scheme. Moreover, there would be negligible impact on daylight entering the flats on the upper floors.
9. Views from the rear windows of the basement and ground floor flats are restricted by the existing two storey outriggers of buildings that comprise part of No 38 and No 36. They are also limited by the development that has been carried out in accordance with the scheme allowed on appeal. They comprise of predominantly built development, with glimpses of the sky. The enlarged basement is significantly closer to the window than the approved scheme, and consequently views are further restricted leading to an increased sense of enclosure. In the absence of any meaningful outlook the living space in the neighbouring property is unduly oppressive for its occupiers.
10. The enlarged basement also reduces the amount of outdoor space available to the occupiers of the existing property at No 38. In this regard I note the Council's concern about the availability of amenity space and agree that the space remaining is very small. Furthermore, whilst I acknowledge that the resultant space would exceed the London Plan 2021 requirements of 5 sqm for a 1-2 person dwelling, it is nonetheless enclosed by tall buildings providing a confined space for its users. Consequently, it has limited capacity to provide space where residents would be able to spend quality time.
11. I have found that the development does not significantly affect light reaching neighbouring properties. However, with regard to outlook, sense of enclosure and outdoor space I have found that the development causes harm to the living conditions of the occupiers of neighbouring properties. Accordingly, the development conflicts with Policies D3 and D6 of the London Plan 2021, and Policy LP2 of the Hackney Local Plan 2033. These policies seek, amongst other

matters, developments that provide deliver appropriate outlook, privacy and amenity. They also seek private external spaces that are attractive and functional.

Other Matter

12. The development provides additional accommodation in the form of a bathroom and storage space however any benefit would be modest in terms of the additional accommodation provided.
13. I also note that the enlarged basement would have a green roof. That said, it would not be visible to all of the occupants of No 38 and would not be accessible by their occupants. Consequently, I give it only limited weight.

Conclusion

14. The proposal is harmful to the resident's living conditions contrary to local and national policy and in conflict with the development plan as a whole. There are no material considerations, of sufficient weight, to outweigh that conflict. For the reasons given above I therefore conclude that the appeal should be dismissed.

John Gunn

INSPECTOR