



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: 6 September 2022

Appeal Ref: APP/U5360/W/21/3285833

72-74 Albion Drive, Hackney, London E8 4LY

- 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 Adam Paton against the decision of London Borough of Hackney.
 - The application Ref 2021/1904, dated 15 June 2021, was refused by notice dated 16 August 2021.
 - The development proposed is described on the application form as 'Change of use of the site from the lawful B1a use to C3 residential via the demolish the existing building and replacement with a like for like scale building with a basement level, forming a 2 x bed dwellinghouse'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether there would be reasonable access to the proposed dwelling; and
 - the effect of the proposed development on biodiversity.

Reasons

Access

3. The appeal site lies to the rear of 72-74 Albion Drive and is currently used for office purposes. It is accessed via a passageway that lies alongside the gable wall of the host property.
4. I note that the Council has no objection in principle to the use of the site for residential purposes but has concerns about the access arrangements. In particular they refer to an appeal decision¹ relating to a similar development wherein the inspector commented that 'the proposed access could not be reasonably described as welcoming, attractive or contributing to a pleasant sense of arrival'.
5. In this regard I acknowledge that some positive changes have been made that would make the proposed entrance appear more attractive. Security lighting would also heighten the sense of safety. However, the point of arrival to the appeal site has not changed from that previously considered. In this regard I saw on my site visit that the entrance doorway to the passageway would be

¹ APP/U5360/W/16/3150892

located beneath the level of the street, and 70 Albion Drive. Moreover, it would be located to the rear of an existing bin store. Consequently, I do not share the appellants view that the entrance would be highly visible or legible from Albion Drive.

6. I have also taken into account the length and width of the passageway as it passes alongside the gable wall of Nos 72-74. In this regard I saw on my site visit that the passageway is of considerable length. I also noted that it was approximately 1.25m wide with a clear view throughout its length. This arrangement would allow a wheelchair or bicycle to pass through without difficulty. Furthermore, I saw that there was an existing ramp between Albion Drive and the proposed entrance door. As a result, the access would be useable by a range of users, including those with mobility issues.
7. Notwithstanding the above, the passageway is located between the tall gable walls of two neighbouring buildings, with No 70 being at a higher level, for part of its length. For the remainder of its length the passageway is contained by a single storey extension and high walls/fences on the common boundary with No 70. A wooden structure, erected at high level, was positioned between the gable walls of Nos 70 and 72, which further enclosed the space between the properties. As a result, future occupiers and visitors to the proposed development would experience a long narrow enclosed space that would be oppressive and unwelcoming.
8. Taking all of the matters together, I find that there would not be reasonable access to the proposed development. Accordingly, on this main issue, I find that there would be conflict with Policies D6 and D7 of the London Plan 2021 (LP), and Policies LP1 and LP17 of the Hackney Local Plan 2020 (HLP). These policies jointly seek, amongst other matters, developments that provide places and spaces that are convenient and enjoyable to use for everyone.

Biodiversity

9. At the time of my site visit the appeal site consisted of a single storey building surrounded by hard paving. Along the eastern boundary of the site was a low planter that contained a multi stemmed, semi mature tree, with a further low planter, containing low level shrubs and flowers adjacent the southern boundary. In my view any contribution that the appeal site currently makes towards biodiversity would be negligible.
10. I have taken into account the Arboricultural Impact Assessment submitted with the application which indicates the type of planting that could be provided on the site if the appeal was to be allowed. In this regard I find that the inclusion of additional trees, a sedum roof on the proposed dwelling and additional climbing plants would provide new habitats. Moreover, the vegetation provided would significantly exceed what currently exists and consequently there would be a net gain in terms of biodiversity.
11. I acknowledge the concerns of the Council with respect to soil depths, however I am satisfied that tree planting in raised containers, with aftercare in accordance with good arboricultural practice, would result in a positive contribution to the biodiversity of the site and its immediate locality. A suitably worded condition would be sufficient to secure the provision and maintenance of an agreed landscaping scheme.

12. In light of the above I conclude, on this main issue, that the proposed development would enhance biodiversity on the appeal site. Accordingly, there would be no conflict with Policy G6 of the LP and Policies LP1, LP47 and LP51 of the HLP. These policies jointly support developments which, amongst other matters, protects and where possible enhances biodiversity leading to a net gain.

Other Matters

13. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. In this respect national policy on heritage assets is set out in the National Planning Policy Framework. At paragraph 197, it sets out matters which should be taken into account including sustaining and enhancing the significance of the heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness.
14. The appeal site lies within the Graham Road and Mapledene Conservation Area (CA). The area as a whole is noticeable in that it consists mostly of houses dating from a relatively short space of time in the Victorian period. The overriding feature of the area is its uniformity of proportion, scale and style of built fabric.
15. The appeal site is not visible from nearby public places but would be visible from the rear elevations of nearby properties. The proposed development would be of a similar scale and footprint to the office building that it would replace and as a result, any impact on the character and appearance of the area would be very limited. In this regard the Council Officer's report indicates that the proposals can be acceptable from a design and heritage point of view. From the evidence before me, and from what I saw on my site visit, I would agree with the Council's opinion with regards to this matter. Consequently, I find that the proposed development would not cause harm to the CA.
16. The appellant has indicated, in his planning statement, that he would be willing to enter into a S106 agreement in relation to 1) a payment in lieu of not meeting zero carbon emission targets in line with the London Plan, 2) car free development, and 3) a payment in lieu of on-site provision of affordable housing. In this regard, whilst the appellant has provided an agreement to pay fees and to sign a unilateral undertaking, I have no signed agreement before me to consider.
17. The appellant asserts that he is unable to provide a unilateral undertaking within the appeal timetable. He has suggested that a condition could be used in lieu of these obligations. Alternatively, a planning condition could be added requiring the S106 agreement to be signed within 6 months of any grant of planning permission.
18. The Planning Practice Guidance (the PPG)² advises that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the

² Paragraph: 010 Reference ID: 21a-010-20190723

best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.

19. In this regard I note that no agreement has been reached between the main parties with regard to the terms of any obligation that might be forthcoming, including any financial contributions. Consequently, I find that the use of a condition, as suggested, would not be appropriate in this instance.

Conclusion

20. Subject to the provision of a landscaping scheme, as proposed, there would be a net gain in bio-diversity. However, I afford this benefit limited weight taking into account the small scale of the proposed development. Nevertheless, the proposed development would not provide reasonable access that is convenient and enjoyable to use for everyone. The limited bio-diversity benefit would not outweigh the harm to the living conditions of future occupiers.
21. The harm to the living conditions of future occupiers would lead to conflict with the development plan as a whole. There are no other material considerations which indicate a decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

John Gunn

INSPECTOR