



Appeal Decision

Site visit made on 26 July 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2022

Appeal Ref: APP/U5360/W/21/3278125

Rear of 58-64 Southgate Road & 58A Southgate Road, Hackney, London N1 3JF

- 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 Englefield Estate Trust Corporation Ltd against the Council of the London Borough of Hackney.
 - The application Ref 2020/3376, is dated 6 November 2020.
 - The development proposed is demolition of existing storage buildings in rear yard and erection of a part single, part two storey building for use as a day nursery (Class E). Erection of an associated infill link building between Nos. 62 – 64 and use of 58A Southgate Road as part of day nursery (Class E). Associated landscaping.
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Decision

1. The appeal is dismissed and planning permission for, “demolition of existing storage buildings in rear yard and erection of a part single, part two storey building for use as a day nursery (Class E). Erection of an associated infill link building between Nos. 62 – 64 and use of 58A Southgate Road as part of day nursery (Class E). Associated landscaping”, is refused.

Preliminary Matter

2. Amended plans were submitted at the appeal stage¹ which primarily reflect the set back to the link building as shown on the ground floor plan². These plans do not substantially alter the nature of the proposal, and I am satisfied that the parties' interests, including that of local residents, would not be prejudiced by the plans being considered in this appeal. Therefore, I have considered the amended plans as part of this appeal.

Main Issues

3. The main issues are:
 - the effect of the proposal on the living conditions of neighbouring occupiers, with respect to noise and disturbance, light, privacy, and outlook; and
 - whether the proposal would preserve or enhance the character or appearance of the De Beauvoir Conservation Area.

¹ Drawing nos: 1807-KW-P-DR-1302 Rev.1, 1807-KW-P-DR-1303 Rev.1, 1807-KW-P-DR-2303 Rev.1, and 1807-KW-P-DR-2307 Rev.1 (all dated 30 June 2021)

² As shown on drawing no 1807-KW-P-DR-1301 Rev.1 (dated 1 February 2021)

Reasons

Living conditions: noise & disturbance

4. The appeal site comprises a yard, the buildings within it (including single storey workshops and temporary structures), and 58A Southgate Road (No 58A), which contains an office with a showroom. The site is situated in a mainly residential area, although some non-residential uses, including offices, are nearby.
5. The proposal seeks to use the site as a day nursery, with a capacity for approximately 129 children, from 3 months to 3 years of age. Approximately 35 members of staff are proposed to be employed.
6. The proposal incorporates 5 courtyard areas at ground floor level (Courtyards A to E). Courtyard E would be the largest, and is referred to as a play garden in the submitted acoustic assessment³.
7. The acoustic assessment includes a Computer Noise Map Print-Out which relies on the assumption that a noise mitigation method, such as an approximately 2.5 metres high acoustic fence, would be installed around the play garden. However, given the proposed height of the proposed acoustic barrier, and the fact that the courtyard would be open to the elements, the acoustic barrier would likely be far less effective in mitigating noise reaching the upper levels and balconies of nearby properties.
8. In this regard, whilst in coming to its conclusion the acoustic assessment refers to the amenity of nearby residents in general terms, and in Table 7 reference is made to 'all other surrounding properties', no specific reference is made to the rear windows above ground floor level at 56 Southgate Road (No 56), the rear balconies protruding from that property, or rear windows above ground floor level at 58 Southgate Road (No 58).
9. Although not all these windows serve habitable rooms, the plans define a room at first floor level at No 58 as a study where in all likelihood any undue levels of noise received to that room would undermine the pleasantness of its use, particularly considering that the appellant has confirmed that a change of use at No 58 from an office to a dwellinghouse use has been implemented. I also observed that at least one of the balconies at No 56 was in active use.
10. Furthermore, whilst I note that that the levels of noise received to the balcony of 15 Orchard Mews (No 15), which is very close to the site, would likely be reduced somewhat by the presence of the buildings which are proposed to be built in-between the play garden and that balcony, the acoustic assessment offers no analysis as to the likely levels of noise which might be received at that outdoor living space from the play garden, or from Courtyard B which would be positioned very close to that balcony.
11. As such, given that the acoustic assessment proceeds on the basis that the noise from courtyards A, B and E would be approximately 70db, it has not been demonstrated that the noise emissions received at the windows and balconies referred to above would be limited to 55dB, which the acoustic assessment has

³ Acoustic assessment of a proposed nursery: Rear of 58-64 and 58A Southgate Road, London, N1 3JF (ACA Acoustics Limited) (report reference: 180408-R002C) (dated 12 August 2020)

set as the baseline to ensure that noise emissions do not have a significant adverse impact on the living conditions of nearby residential occupiers.

12. In this context, although the sound of children playing generally-speaking is perceived as 'happy noise', given that babies and toddlers would likely be using the relevant spaces, I consider that the proposal has the clear potential for piercing sounds to emanate from courtyards A, B and E due to the everyday sounds of small children at play which would include occasional screams and crying from even a small number of children during several portions of the day. As this noise would likely be sporadic and unpredictable in nature, it would have the potential to be particularly invasive to the occupiers of the properties mentioned above.
13. In relation to this I have considered the draft operational management plan, which mentions that the methods detailed within it have been employed at existing nurseries, where no noise complaints from surrounding residents have been received. However, as limited details have been provided as to the locational characteristics of those other nurseries, it is unclear whether those examples are sufficiently comparable with the proposal before me, particularly considering the site's very close proximity to residential properties and their balconies.
14. Considering this, as the proposal has the clear potential to harm the living conditions of nearby occupiers via noise and disturbance, I consider that it has not been demonstrated that imposing a planning condition to require the submission of a final version of the management plan to be submitted to the Council would adequately mitigate the noise disturbance to nearby occupiers that the proposal would likely cause.
15. Taking all of the above into account, I consider that the proposal would result in harm to the living conditions of the occupiers of 56 and 58 Southgate Road and 15 Orchard Mews, with respect to noise and disturbance.

Living conditions: light

16. I have had regard to the submitted daylight and sunlight reports⁴ and the associated letter⁵. I note that an occupier of 56D Southgate Road (No 56D) has mentioned that errors have been made in the report dated 5 August 2020 in terms of the identification of some of the rooms and the stairs within flats A, B, C and at No 56D. Although this has not been disputed by the appellant, the data presented in the report does not indicate that the proposal would cause any noticeable loss of sunlight or daylight to those areas.
17. The data presented shows that the proposal would be likely to result in a noticeable loss of sunlight to the garden at 66 Southgate Road (No 66), as the increase in overshadowing under the proposal would be more than 20% of the current values. Taking into account the size of the garden, which I observed on my site visit, that the increase would only be 2% above that recommended in the relevant guidance, and the surrounding dense urban environment, in my view the proposal would not unacceptably harm the living conditions of the occupiers of No 66 in relation to daylight and sunlight.

⁴ Daylight and Sunlight Report: Land at Rear of 58-64 and 58a Southgate Road, London, N1 3JF (The Benyon Estate) (dated 5 August 2020) (Lumina London Ltd); Addendum Daylight and Sunlight Report: Land at Rear of 58-64 and 58a Southgate Road, London, N1 3JF (The Benyon Estate) (dated 5 May 2021) (Lumina London Ltd)

⁵ Letter dated 17 August 2020 (Lumina London Ltd)

18. I have taken account of all the other concerns raised by local residents, and I note that working from home is increasingly common, but aside from the points mentioned above, no substantive evidence has been presented to fault the methodology used in the daylight and sunlight reports.
19. Considering the numerous forms of analysis found in those reports and the comprehensive methodology employed, on the basis of the evidence before me I find that the proposal would have an acceptable effect on the living conditions of neighbouring occupiers, with respect to light.

Living conditions: privacy

20. The courtyard at Orchard Mews is currently overlooked on 3 sides by the windows to some of the properties in Orchard Mews. Considering this, and that there would only be 2 high-level non-opening windows at first floor level facing in that direction, I consider that the proposal would not result in a harmful degree of overlooking into the courtyard.
21. However, one of the windows serving the proposed Toddler Room 2 would be positioned at almost point-blank range in front of the balcony to No 15. Whilst that window would be non-opening, its close proximity to the balcony would considerably reduce the pleasantness of the use of that outdoor living space by reason of a perception of being overlooked at close range. Harm to the living conditions of the occupiers of No 15 would thereby result, with respect to privacy.

Living conditions: outlook

22. Although the proposed nursery buildings to the rear of the appeal site would partially obscure some of the outlook from the first floor windows at No 15 which face Orchard Mews, a mostly unobstructed outlook towards Orchard Mews would remain. In the light of this, and taking account of the fact that the proposed nursery buildings would only extend partially along the boundary wall with Orchard Mews, the proposal would not reduce the level of outlook from those windows at No 15 by an unacceptable degree.
23. However, I observed on my site visit that the balcony to No 15 currently enjoys a fair sense of spaciousness due to the low-rise nature of the buildings at the appeal site. The rear elevation of Toddler Room 2, a first floor room, would be positioned directly in front of this balcony. The consequent reduction in the sense of spaciousness, and the overbearing nature of the proposed nursery building at such close proximity to that balcony would make that outdoor living space much less pleasant to use.
24. Given the proximity of the proposed nursery building to that space, the roof design would not adequately alleviate the sense of enclosure that would be caused. As a result, the proposal would result in harm to the living conditions of the occupiers of No 15 in relation to outlook.
25. I observed that a good level of outlook exists above the long rear wall which separates the site from Orchard Mews, and that it serves to break up the dense mass of built form that exists in the vicinity of Orchard Mews. Although the wall of Toddler Room 2 facing Orchard Mews would not extend along the full length of the wall, the combination of its height and protrusion along the wall would appreciably reduce this level of outlook, which would serve to undermine the pleasant and attractive experience that the courtyard to Orchard Mews

currently provides to local residents. Hence, the proposal would result in harm to the living conditions of the occupiers of Orchard Mews, in relation to outlook.

Living conditions: conclusion

26. Reference has been made to previous schemes⁶, and in particular an extant consent for a 2-storey building, presented as a fall-back position. However, as no plans have been provided it has not been possible to make a meaningful comparison with the proposal before me. Additionally, whilst I note that nurseries are contained within Class E of Schedule 2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) this is subject to the proviso that such a use can be carried out in a residential area without detriment to the amenity of that area by reason of noise.
27. Considering my findings above with respect to noise and disturbance, the evidence does not demonstrate that there is a real prospect that the fall-back position could be fully implemented with a subsequent conversion to a nursery. Accordingly, the fallback position has been given limited weight and it does not change my findings on this main issue.
28. I therefore find that the proposal would have an unacceptable and harmful effect on the living conditions of the occupiers of Nos 56 and 58 Southgate Road and No 15 Orchard Mews with respect to noise and disturbance, on the living conditions of the occupiers of No 15 Orchard Mews with respect to privacy, and on the living conditions of the occupiers of No 15 Orchard Mews and the other occupiers of Orchard Mews with respect to outlook.
29. The proposal would therefore conflict with Policy LP2 of the Hackney Local Plan 2033: Strategic Planning (adopted 2020) (Local Plan) which provides that, amongst other things, all new development should be designed to ensure there are no significant adverse impacts on the amenity of occupiers and neighbours, including in relation to noise, visual privacy and overlooking, and outlook.
30. The proposal would also conflict with Policy D14 of The London Plan (published 2021) which provides that, amongst other things, in order to reduce, manage and mitigate noise to improve health and quality of life, residential and other non-aviation development proposals should manage noise by avoiding significant adverse noise impacts on health and quality of life, and with Policy D3 of The London Plan which provides that, amongst other things, development proposals should deliver appropriate outlook and privacy and help prevent or mitigate the impacts of noise.
31. The proposal would also conflict with paragraph 130 f) of the National Planning Policy Framework (the Framework) which provides that, amongst other things, planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Character and appearance

32. The site lies within the De Beauvoir Conservation Area (conservation area). The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at s72(1) that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

⁶ Including Local Planning Authority references 2008/3038, 2010/0909, 2011/1722

33. The significance of the conservation area, as a whole, as a designated heritage asset is derived predominantly from its abundance of commonly well-maintained mid-19th century properties which exhibit high standards of architectural design, the verdant character of many of its streets, and the quiet character of many of its residential areas.
34. The site contributes to the significance of the conservation area primarily due to the low-rise nature of the buildings presently in the yard which do not unduly detract from the attractiveness of the properties in Orchard Mews and on Southgate Road, and by the first floor frontage of No 58A which confidently replicates the style of the properties which adjoin No 58A.
35. The 2-storey portion of the proposed nursey buildings which would be situated closest to Orchard Mews would not extend across the full length of the boundary with Orchard Mews. Nevertheless, due to its height, considerable bulk, and siting at the end of what is a focal point for residents both entering Orchard Mews from Southgate Grove and walking through the courtyard at Orchard Mews, this element of the proposal would appear as an overly-dominant structure in its context. Its imposing presence would be exacerbated by the proposed materials for this contemporarily-designed building, which would include pigmento zinc standing seam to the roof and upper storey cladding, which would jar with the more restrained colour palette found on the nearby buildings within Orchard Mews.
36. Landscaping is proposed within the site, including a green roof. The proposed frontage for the link building, to be positioned between Nos 64 and 62 Southgate Road, would visually mimic the style of the proposed frontage at No 58A and would be an improvement over the existing shutters. Both these frontages would complement the appearance of the nearby properties on Southgate Road. Even so, in my view these positive aspects of the proposal would not be sufficient to adequately mitigate the harm that the proposal would cause to the character of the area by virtue of the 2-storey portion of the proposed nursey buildings appearing to be at odds with their surrounding environment. Hence, the proposal would not preserve the character of the area. Harm to the significance of the conservation area as a designated heritage asset would thereby result, and in this respect this matter is decisive in itself.
37. In terms of one's individual experience as opposed to the technical analysis provided in the submitted acoustic reports, a notable number of local residents have referred to the quietness of the area, and in particular the peaceful environment that Orchard Mews provides to its residents. This is consistent with my observations which although they merely constitute a 'snapshot' in time, there is nothing substantive before me, including any acoustic assessment based on recently-recorded sound levels, to suggest that my observations were untypical.
38. I have found on the first main issue above, that the proposal would cause harm to the living conditions of some local residents due to noise and disturbance. In addition to this, the nursery would have the capacity for approximately 129 children and approximately 35 members of staff, with parents / carers also attending to drop off and pick up their children.
39. This would entail a particularly intensive use of the site considering its size and based on the information before me would involve a significant uplift in terms

of the numbers of comings and goings to the site than which presently occurs. The combined effect of the considerable uplift in noise and disturbance that would occur, including via comings and goings to the site, would erode the quiet character of the area. These factors would, in turn, mean that the proposal would fail to preserve the character of the area, resulting in harm to the significance of the conservation area as a designated heritage asset.

40. On the first main issue above, I referred to a fall-back position, and the fact that as no plans have been provided it has not been possible to make a meaningful comparison with the proposal before me, and that there is not a real prospect that the fall-back position could be fully implemented with a subsequent conversion to a nursery. These considerations also apply to this main issue. Accordingly, the fallback position has been given limited weight and it does not change my findings on this main issue.
41. As the harm to the character and appearance of the conservation area identified above would be localised, the proposal would cause less than substantial harm to the significance of the conservation area as a designated heritage asset, but nevertheless this harm is of considerable importance and weight. The Framework advises that such harm should be weighed against the public benefits of the proposal.
42. The appellant has stated that the site currently provides very limited employment generation and in this regard the proposal would create approximately 35 new full-time jobs, thereby providing employment opportunities for local people, including apprentices. By providing a purpose-built nursery on what is presently under-utilised land, the proposal would provide high quality childcare for which there is evidently a high demand in this established and accessible residential area. Furthermore, I note that N Family Club also offer events for the local community, including workshops, talks and shows.
43. The Framework makes clear that great weight needs to be given to designated heritage assets' conservation. Collectively I give moderate weight to all the benefits of the proposal and find that they do not, either individually or cumulatively, amount to public benefits which outweigh the harm that would be caused to the significance of the conservation area.
44. I therefore find that the proposal would not preserve or enhance the character or appearance of the conservation area. The proposal would conflict with Policies LP1 and LP3 of the Local Plan which collectively provide that, amongst other things, development proposals affecting conservation areas or their settings will be permitted where they preserve or enhance the character and appearance of the area.
45. The proposal would conflict with Policies D3 and HC1 of The London Plan which collectively provide that, amongst other things, development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings. The proposal would also fail to conserve or enhance the historic environment, as required by section 16 of the Framework.

Other Matters

46. For the avoidance of doubt, the conduct of the Council during the processing of the planning application, including concerns relating to how the planning application was dealt with, are not matters that I can assess in the context of a planning appeal.
47. The appellant has engaged in constructive dialogue with the Council, including by way of pre-application discussions, and previously conducted a public exhibition, which has helped to shape the scheme now before me. However, in terms of the planning merits of this appeal, this is a neutral matter, which does not weigh in favour of the proposal.
48. As explained on the second main issue, above, the proposal would provide benefits to the local area in terms of employment generation and high-quality childcare provision, on an under-utilised site in an established and accessible residential area, and N Family Club has demonstrated their credentials in terms of engaging the local community via various community events.
49. These matters would be in compliance with a number of the Council's development plan policies. However, given the modest quantum of employment generated and the amount of childcare provided in my view they would not, either individually or collectively, outweigh the harm I have identified to both the living conditions of neighbouring occupiers and the conservation area and thus to the conflict with the development plan overall.
50. Had my findings in relation to the main issues been more favourable, it would have been necessary to address representations on the other issues raised by local residents in more detail. However, as I am dismissing the appeal for other reasons, I make no further comments on these matters.
51. A Unilateral Undertaking has been submitted which relates to contributions in respect of Construction Logistics and Community Safety Monitoring and highways. However, as the appeal is to be dismissed for other reasons, it is not necessary to consider the submitted Undertaking in any further detail.

Conclusion

52. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR