
Appeal Decisions

Site visit made on 13 October 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Appeal Ref: APP/U5360/C/21/3287612 (Appeal A) 65-69 Ravensdale Road, Hackney, London N16 6TJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Bnos Zion D'Bobov against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice is dated 28 October 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of an external staircase to the rear elevation of 65-67 Ravensdale Road, the erection of a single storey side infill extension between 67 and 69 Ravensdale Road and the erection of a timber and plastic enclosure over the rear external staircase to 69 Ravensdale Road.
 - The requirements of the notice are: 1. Remove the external staircase from the rear elevation of 65-67 Ravensdale Road as shown in Appendix 1 'Photograph of the external staircase' and any associated fixtures and fittings; 2. Remove the single storey side infill extension located between 67 and 69 Ravensdale Road as shown in Appendix 2 'Photographs of the single storey side infill extension' and any associated fixtures and fittings; 3. Remove the enclosure above the external rear staircase of 69 Ravensdale Road as shown in Appendix 3 'Photograph of the enclosure'; 4. Make good all damage to the property resulting from the removal of the unauthorised works as listed above; 5. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal Ref: APP/U5360/W/22/3296976 (Appeal B) 65-69 Ravensdale Road, Hackney, London N16 6TJ

- 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 Bnos Zion D'Bobov against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2021/2332, dated 30 July 2021, was refused by notice dated 22 October 2021.
 - The development proposed is described as 'Erection of a new glazed, infill link extension between Nos 67 and 69 Ravensdale Road. Retention of No 69 as part of the school. Creation of new fire exit from the rear of No 67. Enhanced sound insulation along the boundary with No 71'.
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Decisions

1. It is directed that the enforcement notice be amended by the deletion of the text 'two months' from the compliance paragraph and its replacement with the text 'three months'.
2. Subject to this amendment, **Appeal A** is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.
3. **Appeal B** is dismissed.

Appeal A on ground (d)

4. Ground (d) is that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. The onus of proof lies on the appellant, and the standard of proof is on the balance of probabilities.
5. The appellant maintains that the structures in question are lawful on the basis that they have been in place for more than four years prior to the date of the notice. To succeed on this ground, the appellant needs to demonstrate that the structures were substantially complete on or before 28 October 2017, on the basis that the notice is dated 28 October 2021.
6. In support of his case on the timber and plastic shelter between the buildings, the appellant provides an invoice from TVZZ Ltd, dated 7 March 2016. This invoice describes works as follows: 'Built a roof with joists and hard plastic to cover from rain, between buildings 67 and 69. Material: joists, plastics and screws.' The document does not give the full address of the appeal site. Furthermore, although the description of the structure referred to is similar to the existing structure, there is insufficient evidence to be certain that it is the exact same structure in terms of position and dimensions. For example, there is the possibility that this invoice could refer to a previous structure that was subsequently replaced.
7. On its own, therefore, the invoice is not sufficiently precise and unambiguous so as to amount to the positive affirmation that it relates to the exact structure that is attacked by the notice. The appellant offers no other corroborative evidence in relation to this element.
8. The appellant confirms that the previous external stairs have been removed within the relevant four year period and replaced with a new staircase constructed of different materials. It was therefore not substantially completed more than four years prior to the date of the notice. The purpose of the staircase is not relevant to my consideration.
9. I therefore conclude that the appeal under ground (d) is not supported by sufficient evidence from the appellant to demonstrate that, on the balance of probability, the operational developments in question were substantially completed four years or more prior to the date of the notice. It follows that, at the time the notice was issued, it was not too late for the Council to take enforcement action against the matters alleged.
10. As a result, the appeal under ground (d) must fail.

Appeal A on ground (a)

11. Ground (a) is that planning permission should be granted for what is alleged in the notice.

Main Issues

12. The main issues are the effect of the development on:

- The character and appearance of the surrounding area; and
- The living conditions of nearby residents, with particular reference to privacy, noise and disturbance.

Reasons

Background

13. Planning permissions were granted in 1999 and 2011 for the use of Nos 65 and 67 as a school. Subsequently, the adjacent No 69 was taken into the school use, materially changing its previous use as a dwellinghouse. The Council served an enforcement notice requiring the cessation of the new use, and the enforcement notice was upheld at appeal, ref: APP/U5360/C/19/3226160, albeit with a lengthier period for compliance.

Character and appearance

14. Nos 65-69 are semi-detached buildings that are typical of the Victorian era in terms of character and appearance. They are constructed of brown/red brick with decorative door and window surrounds to the front facades, and plainer elevational treatments at the rear. Although they have been altered in various ways over the years, they are attractive properties that make a positive contribution to the surrounding street scene.
15. The single storey side infill extension is constructed of a timber frame supporting a clear corrugated plastic roof. It spans the gap between No 67 and No 69, and is set back from the fronts of the buildings. The external staircase enclosure comprises similar timber framing with a plastic roof covering the stairs leading from the ground to a higher level doorway at the rear of No 69.
16. Whilst the structures are functional and lightweight, they do not have a high standard of design. Rather, they appear rudimentary and at odds with the architectural quality and refinement of the existing Victorian buildings. The materials do not match those of Nos 67 and 69, and do not complement them either, being of a lower visual standard. As a result, I saw that they do not integrate successfully with the adjacent properties in design terms.
17. The external staircase runs across two levels and links the furthest part of No 65 to the nearest section of No 67. It is of metal construction and painted red. Although I note the appellant's stance that the colour of the stair has been chosen to harmonise with the main property, there is a notable colour contrast between the two, which causes the stair to be more visually obtrusive. In addition, the protrusion of the stair from the rear draws the eye and makes its presence more obvious.
18. I accept that these structures are away from the public realm. However, they are visible from a number of properties in the vicinity of the appeal site. In any

event, Policy LP1 of the Hackney Local Plan 2033 (HLP) requires all new development to be of the highest architectural and urban design quality, and does not differentiate between public and more private locations. Moreover, there is little evidence that these are typical forms of development in the surrounding area.

19. I therefore find that all three elements of the development unacceptably harm the character and appearance of the appeal site and of the surrounding area, contrary to the requirements of HLP Policy LP1.

Living conditions

20. The Council object to the external staircase on the grounds that it results in an unacceptable loss of privacy to adjoining and surrounding properties as well as unacceptable noise and disturbance impacts.
21. In terms of its use, the appellant states that the staircase is there for emergencies only, and is not used on a day to day basis. They argue that the external staircase is less than 1 metre in width and is not large enough for gatherings of pupils. On that basis, they contend that there is unlikely to be undue overlooking.
22. Due to the intervening distance between the staircase and 71 Ravensdale Road, which is in residential use, it is unlikely that occupants experience significant privacy issues from its use. Some noise might carry, but again, the distance is likely to mitigate that effect to some extent.
23. However, 63 Ravensdale Road is much closer, and so there is the likelihood of overlooking of the property and its garden. I have taken into account the representation from that address that the occupants have experienced noise from pupils running and shouting whilst using the stair. The fact that pupils might not be able to congregate on the stair does not preclude noise disturbance.
24. On that basis, I am not convinced that the new stair has been designed to ensure that there are no significant adverse impacts on the amenity of neighbours, contrary to the requirements of HLP Policy LP2

Other matters

25. The appellant cites the requirements of HLP Policy D12 which relates to fire safety. However, there is little further detail on the school fire safety measures, other than a letter from CEC Safety in response to a letter of 20 April 2021 states that although there was a need to replace the old staircases for compliance purposes, the replacement staircase is to be regarded as an essential but 'temporary' measure. There is therefore insufficient evidence on this matter to allow me to set aside the policy requirements discussed above.

Conclusion

26. For the reasons above, Appeal A on ground (a) fails, and the deemed planning application is refused.

Appeal B – s78

Main Issues

27. The main issues are the effect of the proposed development on:

- The character and appearance of the surrounding area;
- The living conditions of nearby residents, with particular reference to noise and disturbance; and
- Sustainability and carbon emissions.

Character and appearance

28. It is proposed to construct a glazed infill extension between Nos 67 and 69 that would allow the pupils and staff to move between the two buildings without going outside. A lift would be incorporated in the centre of the stairwell allowing access to all levels.
29. The structure would rise several storeys, exceeding the eaves height of the two adjacent buildings, but sitting below their respective ridge heights. The appellant explains that this additional height is needed as without it, the staircase would not be able to access all the floors. They state that this factor is important in ensuring the inclusiveness of the facility.
30. The front of the extension would be set back from the line of the existing front elevations, which is to be welcomed. However, it would introduce a new built element whose materials and aesthetic would have no visual cues in the vicinity, which is characterised by Victorian brick buildings. Due to its excessive height, the extension would not appear subservient, and would draw the eye unduly as a result. This would particularly be the case during the hours of darkness, when the structure would be lit internally.
31. The appellant argues that infill extensions are characteristic of the street scene, and refers specifically to the brick infill extension between 55 and 57 Ravensdale Road. They argue that this extension is unsuccessful in design terms primarily because the brick it utilises does not accurately match the brick of the adjacent buildings.
32. By contrast, the new extension would form a deliberate foil to the existing building style, and I agree that this can often be a successful design approach, even in sensitive historic locations. In this case, however, the visual contrast between the development and the traditional appearance of the buildings would be stark. In departing so radically from the prevailing character of the appeal site and the neighbouring properties, the proposal would appear as a clearly incongruous addition.
33. I find that the development would fail to harmonise with the existing buildings, appearing out of context, and would unacceptably harm the character and appearance of the surrounding area. As such, the proposal would be contrary to HLP Policy LP1, which states that all new development must be of the highest architectural and urban design quality, and that innovative contemporary design will be supported where it respects and complements historic character.

Living conditions

34. The Council's concern relates primarily to the effect of the development on the living conditions of residents at No 71. They found that insufficient information

has been provided with regard to noise and disturbance generated from the use of No 69 as part of the school premises.

35. In response to the Council's concerns, the appellant submitted an Acoustic Assessment by Syntegra Consulting, dated June 2021. The work described in the report was undertaken in May 2021. The document concludes that the internal noise levels within the school classrooms should be acceptable with the existing single glazing, assuming that an alternative means of ventilation is provided to prevent the need to open the windows. It also finds that break out noise from within the school and noise from the external play areas will fall within acceptable levels. Finally, it recommends sound insulation of the party wall with No 71.
36. Whilst I take these findings into account, a number of issues arise. The type and location of the plant that would be needed to adequately ventilate the building does not form part of the proposal. The report then recommends that a further assessment be carried out once the precise plant specifications have been determined. Given this level of uncertainty, it would not be appropriate to leave these matters to be conditioned. Furthermore, there could be little certainty that a condition requiring the windows to be shut at all times would be enforceable. As a result, such a condition would fail to meet the six tests set out in paragraphs 56 of the National Planning Policy Framework and 21a-003-20190723 of the Planning Practice Guidance.
37. With regard to the proposed sound insulation, the construction of the party wall has not been confirmed, although I note that the report has recommended a specification of the acoustic lining based on the worst case scenario. However, it also states that the installation of acoustic lining would improve the sound insulation of the wall to a level that is usually acceptable between a normal commercial space and a residential property. The caveat within the word 'usually' is of concern here, as is the reference to 'normal commercial space', which is not the use being sought here.
38. The acceptability of the scheme in terms of living conditions therefore depends upon a significant number of unknown factors, and upon the permanent shutting of the windows, which could not easily be enforced. Drawing these threads together, I conclude that it has not been convincingly demonstrated that the development is or will be acceptable in terms of its effect on the living conditions of nearby residents, contrary to HLP Policy LP2.

Sustainability and carbon emissions

39. The third reason for refusal states that insufficient information has been submitted to allow a full and proper assessment of the sustainability measures, such as the overheating impacts of the development and whether the maximum feasible reduction in carbon emissions can be achieved.
40. The appellant argues that the proposal relates to a small infill extension to an existing building. However, as may be seen from the description, the development clearly incorporates the material change of use of No 69 for use as a school.
41. Turning to the relevant policies, paragraph A of Policy S1 4 (Managing Heat Risk) of the London Plan 2021 (LP) states that development proposals should

minimise adverse impacts on the urban heat island through design, layout, orientation, materials and the incorporation of green infrastructure.

42. HLP Policy LP54 requires all new development to regulate internal and external temperatures through orientation, design, materials and technologies which avoid overheating, mitigate the Urban Heat Island (UHI) effect and have regard to maximising the use of the cooling hierarchy. HLP Policy LP55 makes reference at paragraph H to development including the re-use or extension of existing buildings, stating that these should achieve the maximum feasible reductions in carbon emissions. There is no evidence within the wording of these policies that they should not apply to the development that is the subject of this appeal.
43. The policy narrative explains that as an inner London borough, Hackney is particularly vulnerable to increasing temperatures from the UHI, whereby buildings retain significant heat and in turn warm the wider environment. In comparison to the lawful use of No 69 as a dwelling, its material change of use to a school has likely led to a significant intensification in terms of the numbers of people using the building, and the electronic equipment they might be using. These factors are likely to be generating significantly more heat than the previous use.
44. The overheating policy also aims to ensure that buildings remain comfortable to the occupants. As discussed above, the windows of No 69 would need to be kept shut at all times, even in hot weather, in order to address concerns over noise and disturbance. The appellant states that all the existing classrooms have air conditioning units, and that the doors would be opened to help the stairwell to cool. However, the lack of detail on this issue is of concern.
45. Paragraph 12.13 of the HLP says that when buildings are re-used or extended, it is critical that intervention is made to ensure the resulting developments are brought up to a modern standard so as to contribute to borough wide contributions to carbon reduction. Retrofitting of existing technologies should be completed in such a way that the original character of buildings is undamaged, and where possible enhanced.
46. With regard to the proposed infill extension, I accept that the type of glass used could be conditioned to assist in regulating its temperature, were I to allow the appeal. However, there is little substantive evidence to show that a holistic approach has been taken to the development as a whole. Again, given the dearth of relevant detail, it would not be appropriate to leave this important issue to be dealt with by condition.
47. I therefore conclude that it has not been convincingly demonstrated that the development would be acceptable in terms of sustainability and carbon emissions, contrary to the requirements of HLP Policies LP54 and LP55, and LP Policy S1 4.

Other matters

48. I have taken into account the representations of support for the appeal scheme, and acknowledge the clear need for educational facilities of this kind. However, there is an equally clear need for development to meet all the relevant policy requirements. These representations have therefore not led me to a different conclusion on the main issues of the appeal.

Conclusion

49. For the reasons above, Appeal B is dismissed.

Appeal A on ground (f)

50. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.

51. The appellant argues that step 1 is unreasonable as it will leave the students and teachers without an alternative exit route from No 65 to 67 in the event of a fire and could put people at risk. The inference here is that the lesser step would be to leave the stair in place. However, this would not achieve the aim of the notice which is to remedy the breach and the injury to amenity. Step 1 would achieve those aims, and so cannot be found to be excessive.

52. In respect of steps 2-5, the appellant makes no argument that they are excessive, but rather that they would not be relevant, had the appeal succeeded on ground (d). However, the appeal on ground (d) has failed, and I have found the developments to be unlawful. That being the case, steps 2-5 are commensurate with the aims of the notice, and are not excessive.

53. The appeal on ground (f) therefore fails.

Appeal A on ground (g)

54. Ground (g) is that the time given to comply with the notice is too short.

55. Nos 65 and 67 are in lawful use as a school, and so I accept the appellant's argument that the works can only be carried out during the school holidays. The longest holidays are during December (Chanukah), Passover (Easter), Sukkot (early-mid autumn) and over the summer break. On that basis, the appellant considers that six months would be needed to allow the works to occur during a holiday period. They go on to say that it is unreasonable and unsafe to request the full removal of the staircase until a suitable alternative has been agreed with the Council.

56. Due to the timetabling of the appeal, the decision is likely to coincide with the December holiday period. That being the case, I consider that three months would give the appellant some additional leeway to make preparations for the work and have it carried out after at a suitable time. This period also takes into account the need to protect the wider public interests. Should additional time be justified, the Council has powers to extend the compliance period.

57. To that limited extent, the appeal on ground (g) succeeds, and I direct that the notice is amended accordingly.

Overall conclusion

58. Appeal A is dismissed, the deemed planning application is refused, and the enforcement notice, as amended, is upheld.

59. Appeal B is dismissed.

Elaine Gray

INSPECTOR