



Appeal Decision

Site visit made on 16 January 2023

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Appeal Refs: APP/G5750/W/22/3294537

Land at 344 Katherine Road, Forest Gate, London E7 8NW

- 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 Mr Dalbir Sanger of JDG Developments (London) Limited against London Borough of Newham.
 - The application Ref 21/02496/FUL, is dated 5 October 2021.
 - The development proposed is Proposed construction of a 4 storey building (3 storeys plus habitable roof space) containing 6 no. flats, 3 x 1beds and 3 x 2beds (Application site is adjacent to a Grade II Listed Building).
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Appeal Ref: APP/G5750/Y/22/3294541

350 Katherine Road, Forest Gate, LONDON, E7 8NW

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Mr Dalbir Sanger of JDG Developments (London) Limited against London Borough of Newham.
 - The application Ref 21/02491/LBC is dated 5 October 2021.
The works proposed are: Minor alterations to the listed building in association with the full planning application on land adjacent to the listed building, for the proposed construction of a 4 storey building (3 storeys plus habitable roof space) containing 6no. flats , 3 x 1beds and 3 x 2beds. Internal alterations proposed to the listed building to relocate the womens WCs and the creation of a new entrance onto Stafford Road to serve the existing restaurant which inhabits the ground floor of the listed building.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed and listed building consent is refused.

Preliminary Matters

3. As Appeal B facilitates the development being considered as Appeal A, and both appeals are concerned in part with the effects of the proposals on the listed Duke of Fife former public house, I have considered the appeals together where appropriate.
4. Neither appeal has been determined by the Council. Nonetheless, the Council has submitted an appeal statement which sets out its areas of concern. This statement has informed my assessment of the main issues.

Main Issues

5. The main issues are:

- Whether the development or works would preserve the Grade II listed Duke of Fife former public house or any special historic or architectural features, including setting (Appeal A and Appeal B);
- The effects of the development on the living conditions of future occupiers with particular regard to daylight or sunlight, outlook, external amenity space, and noise and disturbance (Appeal A);
- Whether the development would accord with local policies with regard to sustainable transport, with particular regard to cycle storage (Appeal A);
- Whether the development would accord with local policies with regard to refuse storage and collection (Appeal A); and,
- Whether the development would accord with local policies and national guidance with regard to natural and cultural assets, including protected trees (Appeal A).

Reasons

Heritage Assets – Appeals A and B

6. The Duke of Fife (public house) is a late 19th century two-storey yellow brick structure with a mansard slate roofed attic storey, located on the corner of the commercial frontage of Katherine Road, and with a two-storey flank wall facing the residential Stafford Road. The listing describes it as richly ornamented, and the extent of the elaborate stone and stucco dressings, which include repeated carytid reliefs, pilasters and Queen Ann style faux gables, dominate the street-facing elevations.
7. The public house was built as an integral part of the extensive residential development of the area in the late 19th century, which comprised very long rows of modest terraced dwellings, unrelieved by open space or an alternative building pattern. Katherine Road is the main artery through the area, and in the vicinity of the public house is lined on both sides of the road by largely independent small shops and other businesses, often with accommodation above ground floor level.
8. The public house is now a betting shop, also with accommodation above. A flat-roofed rear extension, which appears to be a later addition, stretches along the rear of the adjoining courtyard which forms the appeal site. The extension is currently a restaurant which has an entrance on Stafford Road and can also be entered through the courtyard. The courtyard is also valued locally as a community space, and contains a Council funded commemorative plaque to Romanian pilots who served in World War 1. This is registered with the Imperial War Museum.
9. The courtyard also contains a small tree which was planted to replace a more mature specimen which is shown in the heritage statement as making a positive contribution to the street scene. At my visit I noticed that the courtyard accommodates commercial bin storage and delivery access for the

restaurant, and the plans show it affords access to a sub-station located to the courtyard's rear.

10. The significance of the public house is derived primarily from the aesthetic and historic value of the elaborate and intact historic fabric on its external envelope, its prominence on its corner plot and its historic spatial relationship with the surrounding dense residential development. The adjoining courtyard, which is land that has not been built on since the public house was built, also contributes to setting, particularly on the southern flank wall where the ornamented faux gables that screen the chimney stacks can be best appreciated in views from further afield and which are facilitated by the open space of the adjoining courtyard.
11. Third party representations indicate that there is significant social and communal significance to be derived from the current and ongoing use of the courtyard as an outdoor space, particularly in an area which appears rather deficient in such areas. There is also social and historic value arising from the links with the local Romanian community. However, the courtyard is privately owned and as such, I give the value arising from its communal and social value minor weight.

Appeal A - Effects of Proposals

12. The development comprises the building of a short four-storey residential terrace containing three one-bedroomed and three two-bedroomed units over most of the courtyard site. The terrace would be attached on its southern side to the existing two-storey precinct and would extend over almost all of the courtyard site. Access to the restaurant and the sub-station would be retained as a narrow dog-legged alleyway. This would be wholly enclosed along the development's rear, but would nonetheless be used to access the proposed cycle storage, the sub-station and the development's bins. The alleyway would also remain in use for the restaurant's refuse transit arrangements and deliveries.
13. The proposed terrace would be articulated as three dwellings on its front elevation, with stand-up parapets on the front sloping pitched roof. This would reflect and continue the design of the attached two-storey terrace, which typifies the underlying building pattern of many Victorian suburbs in London. The principal elevation would have a simple contemporary and repeating pattern of fenestration, and some care has been taken to find reference points with the public house in its design with regard to eaves heights and a pared down tryptich design of window openings on the first and second floors.
14. However, to the rear, a projecting box like dormer would extend along the entire length of the development and would be almost as high as the ridge. This would be very bulky, and would appear incongruous alongside the rear pitched roofs of the existing commercial precinct to the south, the dwellings on Stafford Road and the mansard roof of the public house itself. I acknowledge that there are large flat-roofed extensions at the rear of dwellings on Stafford Road and the restaurant presents as a bulky addition to the building pattern. Nonetheless in the immediate vicinity of the site, these extensions sit below the eaves of those dwellings, and well below the mansard roof of the public house.
15. Moreover, the development's rear façade would have a particularly austere and minimalist appearance, and the mass and bulk of the blocky top storey would

appear top heavy in this context. The third-floor balcony would also appear to be a rather random addition, unrelated to the underlying design. I acknowledge that the rear of the development would not necessarily be visible from the public realm but that is not necessarily determinative with regard to the setting of heritage assets.

16. The development's height would also partially obscure the ornamentation on the public house's southern elevation. The faux gables are positioned above a largely blank façade that includes only one window. Nonetheless the ornamentation at the top of this elevation and roof level clearly suggests that the detail was designed to be seen at distance, to reinforce the position and status of the public house in its heyday. Although there would be a gap of some four metres between the public house's flank wall and the development's roof, this would not be sufficient to see the detailing other than at close range and in distorted views from below. This would severely limit its impact and appreciation.
17. As such, whilst I appreciate that the development's Katherine Road elevation would continue the underlying styling of the nearby commercial frontages, the partial screening of the public house's roof level ornamentation and the undue bulk and minimalist design of the development at the rear would have an adverse effect on the public house's setting and would diminish significance. This would lead to less than substantial harm.

Appeal B - Effects of Proposals

18. Appeal B is concerned with the provision of a new entrance door within one of the arched windows on Stafford Road, and internal alterations to accommodate additional toilets.
19. On both Katherine Road and Stafford Road, large windows under shallow stucco-framed arches alternate with arched doorways beneath carytid motifs. The glazing is mounted on low timber panels, and all but one of the windows appear to have the original carved timber mullions.
20. One of these windows is boarded up and although the timber panelling appears to be intact, the mullions have been removed and replaced with basic timber profiles. Appeal B seeks to replace this window with a new glazed entrance within the existing arch. The proposed glazing arrangement would be replicated with the proposed double doors sitting within the lines of the original mullions. There would be some loss of historic fabric, and the original design of the fenestration would be amended, although in a manner that was sympathetic to the remaining windows. On balance, although the proposals with regard to the window would not preserve the public house, the degree of harm would be at the lower end of less than substantial harm.
21. It appears from the plan that the proposed toilets would be located within the ground floor extension. There is very little evidence before me to indicate that the proposals in this regard would fail to preserve or enhance the public house's significance.
22. Nonetheless, the development and works would fail to preserve the public house or its setting, and in this regard and taken together, would be contrary to Sections 16(2) and 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) and Policy SP5 of the Local Plan (LP). This states that

designated heritage assets will be conserved and enhanced, amongst other considerations. There would also be conflict with Policy D8 B) and F) of the London Plan which require development proposals to be related to their local and historic context, and to create a mutually supportive relationships between the space, surrounding buildings and their uses.

23. Paragraph 202 of the National Planning Policy Framework (the Framework) sets out that where a development proposal will lead to less than substantial harm to the significance of a designated heritage assets, this harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimum viable use.
24. In this case there is nothing before me to indicate that the public house would cease to provide commercial or residential accommodation if the appeals were dismissed. There would be public benefits arising from the provision of housing units. However, the Council has an overarching aim to increase family housing, to reduce population churn. The provision of what are rather modest units of accommodation therefore carries less than full weight. Moreover, there is nothing before me to indicate that the Council has concerns in relation to the principle of development.

Living conditions – Appeal A

25. The ground floor of the development would comprise one self-contained flat, Unit 1, and the lower floor of Unit 2. The windows for the living area and bedroom of Unit 1 would be recessed from the footway and would be bounded on the footway side by a perforated metal screen about 1.7 metres high, which would be hard against the footway. Unit 1 would also have a large window on its side elevation, which would face the side wall of the existing lean-to extension, at a distance of around 1 metre.
26. The kitchens for Units 1 and 2 would be at the rear of the ground floor, which would be about 7 - 8 metres deep. Even without the metal screens on the front windows it seems unlikely that the rear kitchen areas would have adequate natural lighting. Moreover, given the proximity of the public house it is unlikely that Unit 1's side window would provide much additional natural light, even though it would be generously sized. The metal screens would also reduce light entry to some extent, depending on the actual design.
27. I conclude that the ground floor accommodation, which would include all of Unit 1, would be heavily dependent on the use of artificial light. Although not raised by the Council I also have a concern in relation to outlook from Unit 1 in particular. The side window would look onto a near wall across a semi-public narrow passage used for deliveries, refuse disposal and collection, and access to a sub-station and cycle storage. The appeal statement notes that privacy would be mitigated with blinds. The front windows would have views obscured by decorative perforated screens which at 1.7 metres high would be above most people's eye level.
28. This would appear to me to result in a rather oppressive living environment. I conclude that the lack of natural illumination and lack of outlook from the proposed ground floor accommodation would result in unsatisfactory living conditions for future occupiers.

29. There is a daylight and sunlight report but it is unclear what is being assessed. Although it contains a table that purports to show that the development would meet current guidelines, all the rooms listed are on the first floor. Consequently, the report does not show that there would be adequate light in the ground floor rooms. Furthermore, one room is identified as having a northern elevation but the closest elevation to north does not have windows on its first floor. As such, I give no weight to this report.
30. Five of the units would have balconies at first or second floor level which would meet external amenity space standards. However, the only private amenity space for Unit 1 would be the recessed space between the perforated screen and the window. Notwithstanding that the screen would reduce light within this space, it is difficult to imagine that this space would provide satisfactory, not least as it could attract rubbish thrown over from the footway. As such, I conclude that the development would not provide sufficient private amenity space for all occupiers.
31. The bins for the accommodation would be located within the alleyway alongside the development's flank elevation. The alleyway would then turn a corner and continue as a narrow and covered route to the restaurant entrance. This would remain in use for deliveries and refuse collection. Quite apart from the awkwardness of negotiating commercial refuse collection and deliveries along this dog-legged alleyway, discussed below, it also seems very likely that there would be associated noise and disturbance for the occupiers of Unit 1, particularly as noise would resonate across the adjacent hard surfaces.
32. I appreciate that acoustic glass could be used in the side window to provide some mitigation for excessive noise. However, that would appear to pre-suppose that the window would be non-openable which would leave the windows facing the road and the footway as the only openable windows for Unit 1. This in itself seems unsatisfactory as Katherine Road appears to be a busy thoroughfare, and would be at odds with the Housing SPG which highlights the difficulty of ventilating single aspect units.
33. The Council has also raised a concern that the relocation of the restaurant's main entrance to Stafford Road would have an adverse effect on the existing occupiers of that road. However, the entrance would be separated from the nearest dwelling by another recessed entrance. Moreover, there would be no particular reason for late night users of the restaurant to travel further down Stafford Road. As such, I am satisfied that in this regard the development and works would not be detrimental to the living conditions of occupiers of dwellings on Stafford Road.
34. Nonetheless, the development would have an adverse effect on the living conditions of future occupiers with regard to sunlight and daylight, outlook, private amenity space, and noise and disturbance. There would therefore be conflict with LP Policy SP8 which requires development to have adequate access to daylight and sunlight, and to avoid unacceptable exposure to noise and disturbance, and Policy D6 of the London Plan with regard to light and private amenity space. There would also be conflict with LP Policies H1, SP1, SP2, and SP3, and Policies D1, D3 and D4 of the London Plan 2021 insofar as these are concerned with high quality design, as well as Paragraph 130 of the Framework which requires development to provide a high standard of amenity for existing and future users. There would also be conflict with Policy SI8 E) of

the London Plan which requires development involving new waste provision to consider its impact on the amenity of the area.

Sustainable transport – Appeal A

35. There would be cycle parking in front of the sub-station, at the rear of the development and beyond the restaurant's rear entrance. As such, the cycle store access would be shared with the restaurant and the sub-station which would not necessarily be wholly secure. It would also be some distance along the dog-legged alleyway which would not encourage use, and in this narrow space there could at times be overspill waste which might cause obstructions.
36. There would therefore be conflict with LP Policy INF2 which requires development to provide safe secure and high quality measures to encourage cycling, and Policy T5 of the London Plan which requires cycle parking to be fit for purpose, secure and well-located.

Refuse Storage – Appeal A

37. At my visit there was a large commercial refuse bin within the courtyard. Whilst I recognise that there would be space for commercial bins just inside the alleyway, this would be some distance from the restaurant's exit. At best there would be a degree of inconvenience associated with the development of the restaurant's movement of its waste material, and there could be some unauthorised use of the development's residential bins. The development also fails to indicate what the arrangements for waste collection would be. I have set out above my concerns in relation to the noise and disturbance associated with waste storage and collection.
38. As such the development would fail to accord with LP Policy INF3 which requires that on-site handling and storage can meet the needs of the development and local collection arrangements without amenity impacts for occupiers of neighbours.

Cultural and natural resources – Appeal A

39. The proposals represent infill development which would result in the loss of an open site in a neighbourhood which appears to be very densely developed with very little openness within the building pattern. Moreover, there does not appear to be any history of development on the appeal site. The site also includes a protected tree. This replaces a previous tree of significant maturity, which was removed without consent.
40. I acknowledge that the commemorative plaque may have been installed without the appellant's knowledge and as such I give the argument with regard to cultural assets no weight. Nonetheless, although the appeal statement is vague with regards to the existing tree, I was able to confirm its presence at my visit. I see no reason to presume that it is not protected by a valid Tree Preservation Order (TPO). Building on the site would require the tree's removal and on this basis alone, there would be conflict with Paragraph 131 of the Framework which states that existing trees should be retained where possible, as well as LP Policy SC4 which specifically protects trees benefiting from a Tree Preservation Order.

Other Matters – Appeal A

41. LP Policy S1 sets out a spatial strategy which requires the provision and protection of family housing, and a mix of housing types as per LP Policy H1. LP Policy H1 requires that sites able to accommodate ten or more dwellings should have at least 39 per cent as family housing. Policy H10 of the London Plan states that there should generally be a range of unit sizes.
42. The site cannot accommodate ten homes and given the specificity of the Council's policy wording, and notwithstanding the over-arching aim to provide and protect family housing, I am unable to conclude that the development represents significant conflict with LP Policy S1, H1, the Framework or Policy H10 of the London Plan with regard to the proposed mix of units.

Conclusion – Appeals A and B

43. The development and works would conflict with the Act with regard to the designated heritage assets and in that regard would represent substantial harm, which would not be outweighed by public benefits. There would also be conflict with the local development plan, the London Plan and Housing SPG, and the Framework. There are no material considerations of such weight to lead me to conclude other than that both appeals should be dismissed.
44. Appeal A is dismissed.
45. Appeal B is dismissed and listed building consent is refused.

A Edgington

INSPECTOR