



Appeal Decision

Site visit made on 10 January 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

Appeal Ref: APP/U5360/W/20/3259155

8 Chardmore Road, Hackney, London N16 6HX

- 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 Mr Tzik (Yetev Lev Boys School) against the decision of the Council of the London Borough of Hackney.
- The application Ref 2020/1611, dated 3 June 2020, was refused by notice dated 29 July 2020.
- The application sought planning permission for *change of use of dwellinghouse (Use Class C3) to school (Use Class D1). (Retrospective application)* without complying with a condition attached to planning permission Ref 2019/2639, dated 12 September 2019.
- The condition in dispute is No 6 which states that: *The external areas of the site the subject of this application shall not be used either as a play area or for educational purposes, and shall only be used as a place of assembly in case of emergency.*
- The reason given for the condition is: *To safeguard the amenities of adjoining occupiers.*

Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. Planning permission for the change of use of the appeal site for the purposes of a school was originally granted through planning permission reference 2018/3972. A separate planning permission was granted in 2019, referenced 2019/2639, for the change of use without complying with condition 8 of the 2018 permission. The effect of the latter planning permission was to extend the timescale for the submission, approval and implementation of the details required through condition 8 by four months. The details for that condition were approved on 23/12/2019 therefore it is reasonable to consider that the appellant chose to implement the latter permission. Irrespective, condition 6 on both planning permission 2018/3972 and 2019/2639 are identical.
3. The appellant seeks planning permission for the change of use without complying with condition 6 of the 2019 permission. The effect of the planning permission would be to permit the use of the external areas of the site to be used for play or educational purposes.

Main Issue

4. The main issue is the effect that the removal of condition 6 would have on the living conditions of the occupants of neighbouring properties with particular reference to noise.

Reasons

5. 8 Chardmore Road (No 8) is an end terrace, situated on a corner plot at the junction with Filey Avenue. The appeal site is located within an area with many residential properties but there are also uses such as schools and places of worship nearby. Many of the streets in the area are lined by residential terraces which provides for a dense built form.
6. Formerly a house, No 8 now forms one property within a wider school complex which adjoins to the south. At the front of the host property there is a hard-surfaced yard bounded by fencing and walling and which is the subject of the condition in dispute. At one end, this yard is beside some garages beyond which a residential terrace on Filey Avenue commences. Further residential terraces are situated on the opposite sides of roads to the north whilst opposite to the west there is a further primary school.
7. The submitted noise report¹ states that, during the survey periods, the background noise climate in the vicinity of the site was dominated by road traffic noise. The noise report presents noise level predictions whereby data from play activity is superimposed onto the existing noise climate and informed by these results, it is put to me by the appellant that it would be unlikely that the existing noise climate would significantly worsen.
8. However, noise generated by traffic is partly characterised by relatively bland continuous and semi-continuous sounds. Given it is presently the dominant noise source in the area it is also established and will, therefore, be very familiar to nearby residential occupants. In the proposal, children would be able to play and use an area where they are presently not permitted to do so. I have no reason to conclude that the yard is used intensively for any particular purpose at present. In contrast, in the proposal, noise would be generated from a part of the site where presently, very little noise will emanate.
9. The character of the noise would also be very different from that caused by road traffic. The noise from children playing within the yard would be more irregular with laughter, raised voices and noisier outbursts likely to occur. Although the presence of garaging and roads does provide some separation to the nearest dwellings on Filey Avenue and their garden/yard spaces, such separation is only modest, and these residential properties are very close-by to the yard at No 8.
10. Therefore, the proposal would permit noise to be generated from a location which will presently create little. The noise would differ in nature from the dominant background noise of traffic and would be far more attention drawing in character. Coupled with the proximity of the nearest residential properties, and despite the noise level predictions put to me, I find that the noise the development would cause would not be likely to be acceptably subsumed into the existing noise climate. Rather it would be intrusive and cause unacceptably harmful effects upon the living conditions of residential occupiers. Whilst the appellant has stated that the yard would be used for periods of no more than 15-20 minutes at anyone time, it has not been shown to me that there would be any appropriate mechanism to ensure that this would be the case. Moreover, I have no substantive evidence before me to suggest that there could not be several such intervals during a typical school day.

¹ Noise Impact Assessment Issue 01 dated 26th March 2020

11. Therefore, and for the reasons given, the proposal would conflict with Policy LP2 of the Hackney Local Plan 2033 (adopted 2020) which, in summary and amongst other matters, requires that development does not result in significant adverse effects upon neighbouring occupiers including in regard to noise.

Other Matters

12. The appeal site is located within the Northwold and Cazenove Conservation Area (CA). I find that the dominance of rows of terraced properties, the variance in their design and the incorporation of ornate architectural detailing to many of these properties in particular contribute to the character and appearance of the CA and its significance. Neither the Council nor appellant have put to me that the development would have any particular effects upon the character or appearance of the CA, and I have no reason to disagree. However, that the use of the yard would preserve the character and appearance of the CA is neutral in the planning balance and does not outweigh the harm which I have identified in the main issue.
13. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The Act sets out the relevant protected characteristics which includes religion or belief, age and sex. In dismissing this appeal, the use of the external yard for the purposes of play and/or education would remain prohibited for children of a Jewish boys school. However, it does not follow from the PSED that the appeal should succeed. Informed by the evidence before me, I expect that the yard space would make some positive contribution to the school days of children but, in my view, the adverse effects of dismissing the scheme on those with protected characteristics would be proportionate having regard to the harm identified to the living conditions of neighbouring occupants.

Conclusion

14. For the above reasons, having taken account of the development plan as a whole and all other relevant material considerations, the appeal is dismissed.

H Jones

INSPECTOR