
Appeal Decision

Site visit made on 13 February 2023

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd March 2023

Appeal Ref: APP/U5360/W/20/3256376

251 Amhurst Road, Hackney, London N16 7UN

- 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 Ozgur Arslan against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2020/1229, dated 20 April 2020, was refused by notice dated 7 July 2020.
 - The development proposed is replacement and enlargement of rear extension and adding B2 use class to existing A1 use class.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council of the London Borough of Hackney was subject to a cyber-attack in 2020, which, amongst other things, resulted in the loss of many documents associated with the application that was subject to this appeal. After a significant period of time and following considerable communication between the Planning Inspectorate and the main parties, the appeal was validated and commenced.
3. The Council has served an Enforcement Notice at the appeal site in relation to a single storey rear extension, which was upheld on appeal¹. The Council considers the existing structure to be that which is subject to the extant Enforcement Notice.
4. The appellant claims there was a rear extension at the appeal site prior to the construction of the existing extension, with reference to anecdotal evidence and aerial photographs. However, the photographic evidence is undated and somewhat unclear. Whilst the photographs appear to show a rear extension of some sort at the appeal property, it is unclear whether this was lawful. I also note the footprint of the rear extension on the photographs seems different to the footprint and elevation of the rear extension shown on the pre-existing drawings².
5. I am not, therefore, satisfied that a lawful rear extension at the appeal property existed and that the pre-existing ground floor plan/rear elevation are accurate.
6. The Appeal Form indicates that an application for costs was submitted with the appeal. No such application was in the evidence before me and so I contacted

¹ Ref. APP/U5360/C/19/3242629

² Drawings Ref. 251.21.01 and Ref. 251.21.02

the appellant to seek clarification. It was confirmed that no costs application had been submitted.

Main Issues

7. The main issues are the effect of the proposal on:

- Shopping facilities in the area
- The character and appearance of the area

Reasons

8. The appeal property is the ground and basement of a 3-storey, brick building within a terrace containing a range of commercial uses at ground floor level, of the sort that would be found in a district or local shopping centre. The area itself is not designated as a retail centre and is not within a conservation area. To the right of the shop front is a separate access to a flat on the upper floors.

Shopping facilities

9. The proposed development would entail the existing ground floor A1 shop use becoming mixed-use, with some 27 square metres of A1 shop use at the front and some 55 square metres of B2 General Industrial use for the remainder. The B2 space would include a single storey rear extension somewhat larger than the existing, and unlawful, rear extension.

10. Policy LP36 (shops outside of designated centres) of the Hackney Local Plan 2033 (HLP) seeks to safeguard shop uses by specifying criteria to be addressed where there would be a loss of 'A1 retail'. The Council considers the proposal would not accord with criteria A.iii of the policy, which stipulates that the replacement use should be an A-class use or a community use. Consequently, under part B of the policy, the appellant would need to provide evidence that the property was marketed for at least one year, to demonstrate there is no realistic prospect of an A1 use operating there.

11. However, whilst there would undoubtedly be a reduction in A1 floorspace at the appeal property, an A1 use would continue in the front part of the building. From the evidence the intention of the appellant is to sell the products in the shop that would be manufactured / assembled in the rear. On this basis I do not consider the proposed reduction in A1 floorspace would entail the loss of 'A1 retail' as specified by Policy LP36. There is, therefore, no need to provide marketing evidence under Policy LP36 Part B.

12. Furthermore, even if I did consider there would be a loss, the supporting text to the policy clearly states that the purpose of the policy is to protect retail uses such as newsagents or corner shops, which can provide day-to-day necessities within a convenient walking distance from people's homes. I do not consider that the purchase of windows from the appeal property would be a day-to-day necessity, and so Policy LP36 would not apply.

13. For these reasons, the proposed development would not adversely affect shopping facilities in the area. It would not, therefore, conflict with Policy LP36 of the HLP.

Character and appearance

14. The proposed development would not affect the front of the appeal building, which is part of a traditional 3-storey brick terrace. From the rear, the various properties have been altered somewhat over time, although the distinctive, V-

shaped *butterfly* roofs remain for the great majority of the units, including the appeal property and the next door properties.

15. The yard to the rear of the appeal property was used for the storage of building materials at the time of my site visit. The rear yards of the other properties on the terrace are generally used for storage or the parking of vehicles. Away from the rear elevation of the terrace the yards are generally not built upon, with the exception of No 245, which contains a large, single storey extension to the boundary with Forman Place. Forman Place is the alleyway at the rear of the terrace, serving the terrace and the properties on its western side.
16. Whilst the rear elevation of the terrace has a somewhat cluttered appearance, including flues which are clearly visible from Forman Place and nearby properties, the *butterfly* roofs provide some visual interest and coherence and there are semi-mature trees at No 253, which soften the appearance somewhat.
17. The proposed single storey rear extension would be constructed from bricks to match the existing building, with a flat roof that would be some 4 metres above the ground. The extension would include windows and a doorway at its end, with steps down to the ground level of the yard. It would span the full width of the appeal property, some 5 metres, and would extend some 8 metres from the principal rear elevation of the building.
18. The proposed floorspace would be around 70% of the floorspace of the existing building, discounting the unlawful existing structure, and the pre-existing structure from the submitted photographs, whose lawfulness is unclear.
19. This would, therefore, be a substantial extension to a mid-terraced property that would be visually obtrusive, given the largely undeveloped neighbouring yards at Nos 247 – 249 and 253 – 255. This adverse effect is not mitigated by the functional design of the proposal which does not relate particularly well to the existing building or to the wider terrace and does not add to the overall quality of the area.
20. The design, scale and massing of the proposed extension would detract from the appearance of the rear elevation of the building and the wider terrace and would be disproportionate and visually inharmonious.
21. Whilst the extension at No 245 is larger, covering the rear yard of that property, it is not typical of the area and does not make a positive contribution to its character or appearance. It is separated from the appeal site by the largely open yards of Nos 247 – 249.
22. For these reasons, the proposed development would detract from the character and appearance of the area. It would, therefore, conflict with Policy LP1 (design quality and local character) of the HLP, and with guidance contained in *Chapter 12 – Achieving well-designed places*, of the National Planning Policy Framework 2021.

Conclusion

23. Whilst the proposal would have an acceptable effect on shopping facilities, the harm to the character and appearance of the area would outweigh this.
24. For the reasons given above, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR