



Appeal Decision

Site visit made on 19 April 2023

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

Appeal Ref: APP/U5360/W/22/3307767

109 Green Lanes, London, N16 9BX

- 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 Patrick Whelan against the London Borough of Hackney.
 - The application Ref. 2022/1169 is dated 12 May 2022.
 - The development proposed is demolition of existing building and construction of a five storey plus basement building to provide six residential units (use class C3) and a social club at basement and ground floor levels (*Sui Generis*).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is a resubmission following the refusal of planning permission and dismissal at appeal for a similar development (ref. APP/U5360/W/21/3277023). The Council considers the revised proposal to satisfactorily address concerns raised on the previous proposal in relation to housing mix, minimum space standards and outdoor amenity space provision, but not to overcome loss of amenity for occupiers at 113 Green Lane in relation to outlook.

Main Issues

3. The main issues therefore are:
 - (a) the effect of the proposal on the living conditions of nearby residents, particularly those at 113a Green Lanes, with particular regard to outlook, and
 - (b) whether mitigation to offset any harm arising from the proposal triggers the need for a planning obligation.

Reasons

Living conditions

4. The proposed replacement building would have accommodation arranged over five floors above the new basement. It would abut the passageway to the north separating the site from the adjacent end of terrace building at 113 Green Lanes (no.113). The upper floor flat at no.113 has a large flank dormer window serving a bedroom that would face towards the recessed top floor to the proposed building.

5. Compared to the previous proposal, the appellant states that the proposed fourth floor would be set back from the boundary with no. 113 by a further 1.7m, increasing the separation from 3.5m to 5.2m. At this distance, there would still be a loss of outlook but the overbearing impact and significant sense of enclosure, cited as reasons for dismissal of the previous appeal, would be dissipated to some degree.
6. Policy LP2 of the Hackney Local Plan 2033 (adopted 2020) (HLP) states that *"all new development must be appropriate to its location and should be designed to ensure there are no significant adverse impacts on the amenity of occupiers and neighbours"*. Overshadowing and outlook are listed amongst the amenity considerations. Policy D3 of the London Plan (2021) promotes optimising site capacity through a design-led approach. This requires *"consideration of design options to determine the most appropriate form of development that responds to a site's context"* and *"that best delivers the requirements set out in Part D"*. Point 7) in Part D states, *"deliver appropriate outlook, privacy and amenity"*.
7. Both policies seek to balance an optimum provision of development without undue impact on the living conditions of neighbouring occupiers. The proposal would have the benefit of providing additional residential accommodation in accordance with local and national planning policies. The scale and form of the proposed building was considered acceptable in the previous appeal in relation to its impact on the character and appearance of the area. The position of the habitable room at no.113 in a dormer to the side rather than to the rear acts as a constraint to development at the appeal site. Neither of the policies referred to above sets out recommended separation distances. Each proposal should be considered in relation to all relevant site circumstances.
8. The appellant has submitted details of several sites in Hackney in which the separation distance between the window to a habitable room and a facing flank wall to a new neighbouring development is similar to or less than that proposed at the appeal site. At 2 Aden Grove (Newington Apartments), near to the appeal site, a separation distance of 4.15m is demonstrated. In several of the examples the facing building rises above the level of the affected habitable room window. I have not been presented with the full planning histories and site circumstances giving rise to these developments. They nonetheless present a picture of relationships which are commonplace within the urban setting of Hackney.
9. The top floor to the proposed building would be to approximately the same height as the roof to no.113. The dormer window faces south, and the appellant's lighting study indicates that there would be no overshadowing or significant loss of natural light. Whilst outlook across the appeal site would still be restricted, the additional set back in the current proposal would enable greater outlook to the front and rear and over the new building.
10. There are flank windows at first and second floor levels at no.113 that appear to relate to circulation areas. The additional height to the new building would result in some loss of light but given the separation, southerly orientation and use of these areas, there would not be a significant loss of amenity. Secondary flank windows to flats 1, 3 and 5 would face towards these windows but a glazing planning condition could ensure that there would be no loss of privacy.
11. In my judgement, having regard to the site's context and all relevant considerations, there would not be a significant adverse impact on the

- occupiers of no.113. The proposal would deliver appropriate outlook, privacy and amenity. There would not therefore be conflict with Policies LP2 and D3.
12. The Council's reason for contesting the appeal refers to other policies in relation to neighbour impact. However, there would not be conflict with Policies D4 of the London Plan relating to delivering good design or with Policy D6 as housing standards and quality measures would be met. The Council's SPD on residential extensions and alterations to private dwellings is not directly applicable to the proposal for redevelopment of this mixed-use site.
13. There have been representations against the proposal on its relationship to other neighbouring occupiers. These were considered to be acceptable in the previous appeal and the proposal has not changed in these respects. For occupiers of dwellings on the opposite side of Green Lanes facing the proposal and for those facing its rear wall from within Pegasus Close there would be sufficient separation to preclude any significant loss of sunlight, daylight, privacy or outlook. There are habitable room windows in the existing building facing these directions. A planning condition could require appropriate glazing to non-habitable room windows closest to existing dwellings to safeguard privacy. Whilst the mass of the new building would be greater than that of the existing building it would not result in a significant overbearing impact for the occupiers of 10 Pegasus Close directly to the rear of the site or loss of natural light given its southerly orientation.

Planning Obligation

14. The Council contends that mitigation is required to offset harm arising from the proposal and that the most appropriate way to do this would be through a planning obligation. The proposal is accompanied by an Agreement to pay fees towards a Unilateral Undertaking under S.106 of the Town and Country Planning Act 1990, but there is not a completed or draft planning obligation before me. The Council has suggested the following Heads of Terms need to be covered in a planning obligation:
- £300,000 affordable housing contribution.
 - £6,000 carbon offset contribution.
 - £20,300 S278 Highways Works contribution.
 - Car Free Development.
 - Considerate Constructors.
 - Monitoring fee of £8,231.50
15. The appellant's Design and Access Statement comments that affordable housing contributions do not apply to this 6-unit proposal. This accords with Paragraph 64 to the National Planning Policy Framework which affirms that provision of affordable housing should not normally be sought for residential developments that are not major developments. However, Policy LP13 to the HLP specifies a requirement for schemes of 1-9 units to provide 50% affordable housing onsite where capable of providing onsite affordable housing or a payment of £50,000 per unit. It is supported by a recently adopted SPD on S106 Contributions (2020) (S106 SPD) which is a material consideration. This confirms the high need for affordable housing in Hackney and that as about half of new housing has come from sites of 9 units or less that it is important to secure affordable housing from such sites.

16. In my opinion the affordable housing contribution sought is warranted. It would satisfy the tests for planning obligations set at Regulation 122(2) of the Community Infrastructure Levy Regulation (2010) (CIL Regs) in that it would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
17. The appellant has submitted an Energy and Sustainability Strategy, but this does not demonstrate that the proposal would meet net zero carbon emissions, a requirement of Policy LP55 of the HLP. As such, a carbon offset would need to be secured at a rate of £1,000 per flat, a rate set in the S106 SPD for residential developments of 9 units or less. From the information available to me, this contribution is justified and would satisfy the tests in the CIL Regs.
18. Policy LP45 of the HLP requires all new residential developments to be car free with limited exceptions. No parking spaces are proposed. The S106 SPD indicates that future occupiers should be restricted from accessing on street parking permits or those in council car parks in perpetuity except for disabled parking. The issuing of permits is the responsibility of the highway authority and enforced through the Traffic Regulation Orders (TROs). There is no information before me to clarify if the TRO would need to be amended and if so, how quickly this could take place. This would be a matter outside the appellant's control and so more suited to inclusion in a planning obligation rather than through a planning condition.
19. The S106 SPD also indicates that highways and other transport mitigation measures may be required based upon Policies LP43 on Transport and Development and LP44 on Public Transport and Infrastructure. The Council has not elaborated on specific measures to which it would spend the requested £20,300 towards S278 Highway Works. From the information available to me I cannot conclude that this contribution would satisfy the tests for an obligation in the CIL Regs. Uncertainty remains and it would not be appropriate to use a positively worded planning condition to require payment of a sum of money.
20. The Council contends that a planning obligation or Grampian style planning conditions would be necessary to mitigate the impacts of the development listed in its heads of terms. It may be possible to use such negatively worded conditions to limit the development that can take place until a planning obligation or other agreement has been entered into in relation to some of the issues but there remains uncertainty on other issues. Planning Practice Guidance states, *"Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency"*. (Paragraph: 010 Reference ID: 21a-010-20190723)
21. My findings are that in view of the uncertainty on the necessity for some of the matters listed by the Council to mitigate the impacts of the development, it would be inappropriate to cover all of these through negatively worded planning conditions. The proposal is not accompanied by a planning obligation. As presented, it would fail to secure appropriate financial contributions towards the provision of affordable housing, car free developments and carbon offsets and would thereby conflict with Policies LP13, LP45 and LP55.

Other Matters

22. Interested parties have raised other concerns. The principal of redevelopment and loss of an historic former public house and the effect of the new building on the character and appearance of the area were accepted in the previous appeal decision. The access to Pegasus Close would be covered and narrower, but the local highway authority has not objected to its dimensions as being inadequate for access by emergency and service vehicles.

Conclusion

23. Whilst I have concluded that the effect of the proposal on the living conditions of nearby residents, would be acceptable, mitigation to offset harm arising from the proposal is required and would best be satisfied by a planning obligation. As the proposal is not accompanied by such an obligation, there would be conflict with the development plan.
24. I acknowledge the appellant's frustration at delays in obtaining responses from the Council during the application process, but my decision has to be taken in accordance with the development plan unless material circumstances indicate otherwise.
25. For the reasons given above I conclude that the appeal should be dismissed.

Rory MacLeod

INSPECTOR

