



Appeal Decision

Site visit made on 15 May 2023

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2023

Appeal Ref: APP/U5360/W/20/3263327

73 Chatsworth Road, Hackney, London E5 0LH

- 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 T Stern against the Council of the London Borough of Hackney.
 - The application, Ref 2020/2595, is dated 1 September 2020.
 - The development proposed is described as 'amalgamation (with extensions) of two existing residential units at lower ground floor level'
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appellant sought to have the appeal linked with another appeal, Ref. APP/U5360/C/18/3216838, concerning Enforcement matters at the ground floor and basement of the same address. However, this was rejected by the Planning Inspectorate because of differences between the proposal and the matters covered by the Enforcement Notice.
3. 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. This caused a very significant delay in the commencement of this appeal.
4. The Council did not adhere to the timetable for this appeal specified in the Start Letter dated 27 February 2023. Furthermore, the Council did not submit its Statement of Case by the date specified in its email to the Planning Inspectorate of 28 April 2023 or explain why this did not occur.
5. Notwithstanding the significant difficulties caused by the cyber-attack more than two and a half years ago, this situation cannot continue indefinitely. Consequently, on 5 May 2023, I advised the parties that I would not accept any further submissions and would determine the appeal on the basis of the evidence before me.
6. From this, and my observations on site, the main issues in this case are the effect of the proposal on:
 - The living conditions of nearby occupiers, with particular regard to privacy; and

- The living conditions of the future occupier, with particular regard to living space, natural light, privacy, and outlook.

Reasons

7. 73 Chatsworth Road is a traditional 3-storey brick building at the end of a short terrace. It contains a café at ground floor level, with a separate access to a (rear) ground floor flat and other flats above, from Blurton Road. The property has been extended to the rear at lower ground, ground and first floor levels, and with a roof terrace at second floor level.
8. The appeal concerns the lower ground floor area of the property, which is accessed via an external doorway and stairs from Blurton Road. The stairs lead down from street level to a small courtyard at the rear of the property that provides access to two unauthorised and, at the time of my site visit, occupied basement dwellings.

Living conditions of nearby occupiers – privacy

9. To the immediate north of the appeal property is a building with a ground and lower ground floor rear extension, which occupies a similar building line to the rear extension at No 73. From my observations on site, the property to the north is in residential use. It has a small rear garden, separated from the appeal property courtyard by a brick wall some 1.2metres high. No details of the size, layout or planning status of this property are in the evidence before me.
10. A degree of reciprocal overlooking of next door terraced properties is to be expected. However, the stairs serving the rear courtyard of the appeal building afford significantly greater scope for overlooking of the property to the north and its rear garden than is possible in reverse. Furthermore, the stairs also afford views into a habitable room in the (rear) ground floor flat at No 73.
11. Whilst it is unclear what the lawful use of the lower ground floor area of the appeal property is, I note the appellant's reference to it being likely to have been retail storage space. However, no details concerning the function or frequency of use of such a space are provided and I also note that such a use has not taken place for some time. The retail storage space is not necessary for the ground floor café to function and given the current layout of uses within the building, it is not likely that a retail storage use would return.
12. The proposed residential use would be likely to entail regular and frequent use of the stairs by a future occupier, such as for travelling to and from work, for recreation, and for shopping or other day-to-day activities. In my view, a residential use would be likely to mean an increased use of the stairs compared to the likely lawful use of the lower ground floor area.
13. Furthermore, whilst the proposal may result in a reduction in activity, compared to the current use of the lower ground part of the property as two separate dwellings, the current use is unauthorised, falls well below the minimum space standards for 1b1p units¹, and so is not comparable.
14. As a result, it is likely that the proposed development would result in an increase in the use of the stairs serving the lower ground floor, and so increase

¹ Technical housing standards – nationally described space standard, 27 March 2015

the scope for harmful overlooking of the next door property to the north, which is in residential use, and the ground floor flat at No 73.

15. For these reasons, the proposal would adversely affect the living conditions of nearby occupiers, with particular regard to privacy. It would, therefore, conflict with guidance contained in the National Planning Policy Framework 2021 (the Framework), including with regard to achieving well designed places.

Living conditions of the future occupier – living space, privacy, natural light, and outlook.

16. The submitted drawings show that the proposed flat would accord with the minimum 37m² size for a 1b1p flat with shower room². This is an acceptable standard for the type of dwelling / occupation proposed.
17. A brick boundary wall would screen the proposed studio flat from overlooking from Blurton Road, whilst a timber panel fence above the rear boundary wall of the courtyard and on the boundary with 45 Blurton Road to the west, would largely prevent harmful overlooking from that location. No 45 does contain windows that face towards the rear elevation of the appeal property and overlook the rear garden, but these are obscure glazed.
18. As previously mentioned, a degree of reciprocal overlooking from terraced dwellings is to be expected. However, the rear windows in the rear extension at ground and first floor level, and the second floor level roof terrace in the appeal building would allow for direct overlooking of the rear garden of the proposed flat, with a consequent loss of privacy for the future occupier.
19. There would be no reciprocal overlooking of outdoor amenity space for the occupier of the proposed flat and the occupiers of the ground and upper floor flats. It is likely that the overlooking and perceived overlooking of the proposed garden would discourage its use, to the detriment of the living conditions of a future occupier.
20. The main external elevation of the proposed flat, which includes the large patio window/door, faces in a west-south-westerly direction towards the rear garden. A small lightwell located several metres from the main elevation by the northern boundary of the property, together with the patio window/door, provides the only means for natural light to enter the proposed flat.
21. The amount of natural light, including sunlight, reaching the flat and garden would vary at different times of year. However, no substantive evidence concerning the amount of natural light that the proposed flat, or its garden, would receive has been provided. Given the design and below street-level position of the flat, the surrounding walls, fences and buildings near the site, and the below street-level position of the garden, I am not satisfied that a future occupier would receive an acceptable amount of natural light, including sunlight.
22. The issue of outlook from the proposed flat and garden has some parallels with the issue of natural light. The flat would have a single-aspect and face towards the rear garden, which as previously mentioned is positioned below street-level. Whilst there would be some outlook over the rear garden and to the north over the rear garden of the next door property, this would be very

² Technical housing standards – nationally described space standard, 27 March 2015

limited, and the brick walls of the courtyard garden, with the walls, fences and nearby buildings above largely enclose the space.

23. The existing and proposed plans do not accurately show the design and position of the stairs that link the lower ground level with Blurton Road. During my site visit I noted the greater extent of the stairs within the garden, which limits the outlook further.
24. Discounting the small lightwell, which would provide no meaningful outlook at all, I am not satisfied that the design and position of the proposed flat and garden would provide an acceptable outlook for a future occupier.
25. I note that the issues of natural light and outlook affecting the appeal property would similarly affect the residential property next door to the north. However, this does not alter my view as to the harm I have identified to the living conditions of a future occupier of the proposed flat.
26. I also note that the proposal would represent significantly better living conditions for a future occupier than those enjoyed by the occupiers of the two unauthorised basement flats. Nevertheless, as set out above, I have found the proposal would cause unacceptable harm to a future occupier.
27. For these reasons, the proposal would provide an acceptable quantum of living space for the future occupier. However, this would be outweighed by the harm caused to their living conditions with particular regard to privacy, natural light, and outlook. It would, therefore, conflict with guidance contained in the Framework, including with regard to achieving well designed places.

Other Matters

28. I have considered the acceptable effect of the proposal on the character and appearance of the area and the provision of bicycle storage in the garden. However, this does not outweigh the harm that I have identified.

Conclusion

29. For the reasons given above, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR