



Appeal Decision

Site visit made on 2 November 2022

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2023

Appeal Ref: APP/E5900/W/22/3301208

1 Frying Pan Alley, London E1 7HR

- 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 Usborne Publishing Limited against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref: PA/21/02283, dated 14 October 2021, was refused by notice dated 15 December 2021.
 - The development proposed is described as: Single Storey Rear Extension at ground floor level.
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Decision

1. The appeal is allowed, and planning permission is granted for a single storey rear extension at ground floor level at 1 Frying Pan Alley, London E1 7HR in accordance with the terms of the application, Ref: PA/21/02283, dated 14 October 2021, subject to the conditions in the attached schedule.

Main Issues

2. The main issues in this appeal are:
 - The effect of the proposed development on the neighbouring properties, with particular regard to 9a Artillery Passage and 52-54 Artillery Lane; and
 - Whether the proposed development makes sufficient provision of refuse storage and collection, cycle parking provision, and step-free access.

Reasons

The effect on neighbouring properties

3. The appeal site is located in the interior of a perimeter block bounded by Frying Pan Alley, Sandy's Row, Bell Lane, and Artillery Passage/Artillery Lane. It is currently a narrow external yard area associated with the modern, six storey, commercial building at 1 Frying Pan Alley. The evidence indicates that this yard previously contained plant and air handling units associated with the building, which have subsequently been removed.
4. Although the properties on Artillery Passage, Artillery Lane, and Sandy's Row that adjoin the appeal site historically had rear yard areas, the submitted drawings together with the Daylight, Privacy, and Enclosure Assessment submitted by the appellant indicate that, with the exception of the yards to number 9a Artillery Passage and 52/54 Artillery Lane, these yard areas have been entirely infilled with ground floor development. This corresponds with

what I saw when I visited the site and observed the interior of the perimeter block from ground level and the upper floor windows of 1 Frying Pan Alley.

5. The proposed extension to the appeal building would result in the whole of the rear yard area being built over. The current ground level of the yard is lower than the floor level of the ground floor of the appeal building. In order to maintain consistent floor levels and ceiling heights between the existing building and the new extension, the proposed extension would have a maximum height of approximately 4.15 metres measured from the existing ground level of the courtyard to the top of the parapet at the edge of the flat roof.
6. Although the reason for refusal set out on the decision notice refers to insufficient information being submitted to determine the potential effect on a number of other neighbouring properties in addition to 9a Artillery Passage and 52/54 Artillery Lane, the Council's appeal submissions do not identify these properties or indeed pursue this point any further. From what I have read and from what I saw at the appeal site, due to the ground level additions at most of the adjoining properties, only 9a Artillery Passage and 52/54 Artillery Lane would be potentially affected by the proposed development. The rear yard walls of these properties are lower than the other enclosure to the yard of the appeal building formed by the ground floor additions to buildings on Artillery Passage. Whilst other nearby properties may have residential accommodation within them, the extent of the ground floor level development at these buildings is such that any windows to residential accommodation would be generally level with or above the level of the roof of the proposed extension.
7. Policy D3 of the London Plan 2021 (the London Plan) seeks to ensure that new development delivers appropriate outlook, privacy and amenity. Policy D.DH8 of the Tower Hamlets Local Plan 2031, adopted in 2020 (the Local Plan), expects new development to protect the amenity of occupiers of existing buildings and, in particular, avoids an unreasonable level of overlooking or an unacceptable increase in the sense of enclosure; ensures that existing habitable rooms have an acceptable outlook; and does not result in a material deterioration of sunlight and daylight to surrounding development.
8. To the rear of 53/54 Artillery Lane is a small rear yard area. To the rear of this property, the proposed extension would be built behind, and abutting, the existing yard wall and would increase the height of the enclosure on the boundary by approximately 2.19 metres. The ground floor of 52-54 Artillery Lane is occupied by commercial premises. Local Plan Policy D.DH8 seeks to protect outlook from habitable rooms and an increase to the degree of enclosure to the yard of a commercial property would have less of an effect on that property than would be the case with residential accommodation. The Council Planning Officer's report and the first reason for refusal, acknowledges that the proposal would have a lesser effect on 52-54 Artillery Lane and the Council has not elaborated further on this matter in its appeal submissions.
9. From the evidence before me, although the proposed development would change the degree of enclosure to the rear of 52-54 Artillery Lane, due to the commercial nature of the ground floor use, I do not find that this change would amount to sufficient harm that would warrant withholding planning permission because of the effect on this property.

10. To the rear of 9a Artillery Passage the proposed extension would be built off part of the existing boundary wall, which currently projects into the yard of the appeal building. This would increase the present height of the wall by approximately 1.9 metres. The ground floor level of number 9a Artillery Passage is in residential use.
11. From the evidence that I have, the ground level within the rear yard of 9a Artillery Passage is similar to that of the appeal site. The photographs provided by the appellant show that the ground floor rear elevation of this property has a window and a doorway. These look onto a rear yard approximately 3.5 metres deep and a similar distance wide.
12. To each side of the yard area are ground floor extensions to the neighbouring buildings resulting in walls of approximately 4 metres in height to each side of the yard for the full depth to one side and for approximately half its depth on the other. On the boundary with the appeal site the rear yard wall is just over 2 metres high. The photographic evidence shows that the outlook from the ground floor rear window is restricted by both the rear boundary wall and the six storey appeal building beyond at approximately 7 metres distance.
13. The appeal proposal would further restrict the outlook from this window by removing the slight depth of field effect arising from the view over the existing boundary wall. The proposed development would undoubtedly change the outlook from this window, however, the reduction in outlook would not be so great that the house would be a significantly less pleasant place to live as other windows in the building would not be affected.
14. The effect of the proposed development on the sense of enclosure within the rear yard area would be more noticeable. Although I did not have access to the yard area, I have been provided with photographs and was able to see it from above from the upper floor windows of the appeal building as well as seeing the surrounding built form from within the external yard of the appeal building. The yard area of 9a Artillery Passage is small and is already enclosed by tall structures to three sides, the three storey rear addition to the house itself and the single storey rear additions to the adjoining buildings. I also saw that the flat roofed extensions to the buildings on each side are used as terraces and are fitted with wooden balustrades and trellises which increase their actual and perceived height. The proposed development would increase the height of the wall on the common boundary to a similar height to those walls to each side.
15. Given the small footprint of the yard area, the resulting enclosure to all sides, would be the same height as, or taller than, the width and depth of the yard. The current lower, albeit still high, wall on the common boundary will currently provide some relief from the present sense of enclosure. The proposed extension would increase the perceived degree of enclosure experienced from within the yard. Local Plan Policy D.DH8 seeks to prevent an unacceptable increase in the sense of enclosure. The supporting text to Policy D.DH8, which whilst not part of the policy sets out how it is intended to be implemented, sets out that outlook is defined as the visual amenity from windows or gardens but is less clear on whether the references to enclosure also include outdoor spaces.
16. In assessing the effect of a development on the amenity, or living conditions, of a neighbouring property there are a number of considerations. The Oxford

English Dictionary defines amenity as: a desirable or useful feature or facility of a building or place, and also as the pleasantness or attractiveness of a place.

17. From within the yard area at present there would be a restricted outlook, due to the high walls on all sides and any views out over the rear yard wall would be towards the six storey appeal building a short distance away. However, the increased height of the rear yard wall, as set out above would increase the overall sense of enclosure by truncating this view and adding an additional high feature. That said, if the proposed development were to proceed, it would not prevent the external yard of 9a Artillery Passage from being used for its intended purposes of providing an outdoor space for the property.
18. The submitted Daylight, Privacy, and Enclosure Assessment indicates that the proposed extension would increase the degree of privacy within the yard of 9a Artillery Passage by interrupting views from the first and second floor windows of the appeal building. Having viewed the appeal site and the yard of 9a Artillery Passage from within the appeal building on both of these floors, I would agree with this finding. The Assessment also concludes, that due to the orientation and relative positions of the appeal building and 9a Artillery Passage, there would be no discernible effect on direct sunlight or overshadowing. Again, from what I saw during the site visit, I have no reason to find otherwise, and I note that the Council accepts in its appeal statement that there would likely be a limited effect on daylight and sunlight.
19. Although the Daylight, Privacy, and Enclosure Assessment concludes that the existing six storey building currently has a greater effect on diffuse daylight than the proposed extension would, the increased degree of enclosure would, nevertheless, have an effect on the amount of daylight received. There is no detailed technical evidence from any party in respect of the current diffuse daylight levels within the yard, or what these would be post development. Whilst these would be lower, due to the resulting increase in the effective height of the rear yard wall, I do not consider that this effect would be so great as to substantially reduce the amount of diffuse daylight within the yard area given the height of the surrounding buildings.
20. Drawing these strands together, the appeal proposal would result in the yard area having a greater degree of actual and perceived enclosure which would have a visual effect, in particular, further reducing the already restricted outlook from it. However, there is no evidence before me which would indicate that the yard area could no longer be used for its intended purpose, or that there would be a significant reduction in the amount of diffuse daylight received in the yard area. In addition, the construction of the proposed extension to the appeal building would have the effect of reducing the level of overlooking of the rear yard from the first and second floor windows of the appeal building which would increase the levels of privacy within the yard. Within this context, I find that the effect of the proposal on the rear yard area of 9a Artillery Passage would be a neutral one.
21. I therefore conclude that the proposed development would not cause harm to the living conditions of the occupiers of the neighbouring properties, with particular regard to 9a Artillery Passage and 52-54 Artillery Lane. It would comply with the relevant requirements of Policy D3 of the London Plan and Policy D.DH8 of the Local Plan.

Cycle and waste storage and access

22. The second reason for refusal relates to the lack of sufficient information in respect of storage for cycles, storage for refuse and recycling, and in respect of step free access. I note that in its appeal statement the Council set out that, had the development been acceptable on residential amenity grounds, these details could have been secured by a planning condition.
23. The appellant states that storage for waste would be incorporated within an extension to an existing waste storage area within the main building. It is also stated that there is no cycle storage at present at the building but that this would also be provided inside the existing building shell. Both of these areas would be accessed via the existing building from Frying Pan Alley.
24. It would have been of assistance to the Council if these areas had been indicated on the submitted drawings and I can see why this might have been included as a reason for refusal. However, although they are not shown on submitted drawings, I was able to see the location of the waste storage facilities when visiting the site as I was able to inspect the interior of the appeal building. At the time of my visit this was undergoing refurbishment and, consequently, it would be possible to reconfigure the ground floor area in a suitable manner. From what I saw, I am satisfied that it is possible to achieve satisfactory arrangements for the storage and collection of waste and for the storage of cycles. These matters could be secured by way of an appropriately worded condition.
25. The appellant also states that a separate planning permission has been granted for the provision of step free access at both the main entrance and the secondary entrance to the building. Whilst I have not had sight of this permission, this has not been disputed by the Council and I have no reason to doubt that this permission exists.
26. I therefore conclude that, subject to an appropriate condition, the proposed development would make sufficient provision for refuse storage and collection, cycle parking provision and step-free access. It would comply with the relevant requirements of Policy D5 of the London Plan and Policy S.TR1 of the Local Plan which, respectively, seek to ensure that new development incorporates accessible design and improves the opportunities for sustainable travel.

Other Matters

27. The appeal site is located within the Artillery Passage Conservation Area. However, the appeal site is located to the rear of existing buildings in the interior of a continuous perimeter block. I do not find that the proposal would be detrimental to the character or appearance of the conservation area. This is because the proposed changes would not be visible from the public domain and only have limited prominence from the private domain. Unlike listed buildings, the significance of a conservation area is dependent upon how it is experienced. Under such circumstances case law has established that proposals must be judged according to their effect on a conservation area as a whole and must therefore have a moderate degree of prominence. Given the above, I find that the proposal would not be harmful to the conservation area and thus preserve its significance.

Conditions

28. I have had regard to the conditions that have been suggested by the Council and the appellant's comments on these. In order to provide certainty in respect of what has been granted planning permission, I have attached a condition specifying the approved drawings.
29. Due to the narrow and constrained nature of the highways in the vicinity of the appeal site and lack of direct access to the appeal site from the highway, it is necessary to impose a condition requiring the submission and implementation of a Construction Management Plan in respect of the works.
30. There are a number of properties containing residential accommodation adjacent to the appeal site and, in order to ensure that disruption from the development, and in particular noise, is minimised, it is necessary to attach a condition restricting the hours during which building works can be carried out. The submitted plans and drawings did not contain details of the proposed cycle storage and waste storage facilities. It is therefore necessary, in order for the development to function effectively, to impose a condition requiring these details to be submitted for approval and subsequently implemented. I have amended the wording suggested by the Council in both cases to correct a typing error that referred to the proposed development as a dwelling.
31. The appellant has questioned the need for the Council's suggested condition requiring details of the proposed "blue roof" to the development. Whilst some details of this are shown on the submitted drawings, I am not persuaded that these provide sufficient certainty in respect of the construction details, functioning, and future maintenance of the structure. The wording of the condition suggested by the Council does, however, contain references to vegetation and habitat creation which do not appear to be relevant to the structure proposed. Consequently, I have amended the wording to make the condition more precise in the context of the development proposal.
32. The appellant has suggested that it would be appropriate to attach a condition requiring that the section of new wall to the rear of 9a Artillery Passage be painted white to match the existing painted yard walls. I would agree that in the interests of reducing the effect on the outlook from this property that such a condition would be necessary and would meet the relevant tests in the Framework and Planning Practice Guidance. Accordingly, I have attached a condition to this effect.

Conclusion

33. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No. P 0 – Site Location Plan; Drawing No. P 00 Revision A – Detailed Site Location Plan; Drawing No. P-01 – Existing Plans Ground and First Floor; Drawing No. P-02 – Existing Rear Elevation and Section through Courtyard; Drawing No. P-03 – Proposed Plans Ground and First Floor; Drawing No. P-04 – Proposed Rear Elevation and Section through Extension; Drawing No. P-10 – Existing and Proposed Section through Extension; and Drawing No. P-11 Revision A – Contextual Sections through Courtyard.
- 3) No superstructure works shall take place until details of the proposed blue roof has been submitted to, and approved in writing by, the Local Planning Authority. These shall include details of construction, drainage arrangements, maintenance arrangements, and a materials specification. Thereafter, the development shall be implemented in accordance with the approved details.
- 4) No development above ground level shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the Local Planning Authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for, but not be limited to:
 - a. the parking of vehicles of site operatives and visitors;
 - b. loading and unloading of plant and materials;
 - c. storage of plant and materials used in constructing the development;
 - d. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate wheel washing facilities;
 - e. wheel washing facilities;
 - f. measures to control the emission of dust and dirt during construction; and
 - g. a scheme for recycling/disposing of waste resulting from demolition and construction work.
- 5) Demolition or construction works and deliveries to the site in connection with the development shall take place only between 08.00 to 18.00 on Monday to Friday, 09.00 to 13.00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

Noisy operations shall not take place outside these hours unless the Local Planning Authority has agreed in writing that there are exceptional circumstances.
- 6) Prior to occupation of the development hereby approved, details of the provision of secure cycle storage facilities for the development shall be submitted to, and approved in writing by, the local planning authority. The facilities shall be provided in accordance with the approved details before the development is brought into use and shall be retained thereafter.

- 7) Prior to occupation of the development hereby approved, details of the provision of refuse and recycling storage facilities to serve the development shall be submitted to, and approved in writing by, the local planning authority. The facilities shall be provided in accordance with the approved details before the development is brought into use and shall be retained thereafter.
- 8) Prior to occupation of the development hereby approved, details of the surface finish to be applied to the section of exterior wall facing the rear of 9A Artillery Passage and 52/54 Artillery Lane shall be submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall be implemented in accordance with the approved details.