



Appeal Decision

Site visit made on 11 July 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2023

Appeal Ref: APP/U5360/W/22/3309952

150 Mildenhall Road, Hackney, London E5 0RZ

- 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 Buchan of Woodgate UK against the Council of the London Borough of Hackney.
 - The application Ref 2022/0427 is dated 8 February 2022.
 - The development proposed is the demolition of the existing building and the erection of No. 2 new dwellings (C3 Use Class).
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Decision

1. The appeal is dismissed and planning permission for the demolition of the existing building and the erection of No. 2 new dwellings (C3 Use Class) is refused.

Preliminary Matters

2. During the course of the application amended plans were submitted. It is clear, in providing their statement of case and putative reasons for refusal, the Council considered the amended plans. I shall therefore determine the appeal on this basis.
3. The appeal is accompanied by a planning obligation by way of a Unilateral Undertaking made under Section 106 of the Town and Country Planning Act 1990 (as amended). This would provide financial contributions towards affordable housing, carbon offset and highways works, would secure the development as car-free and commit the development to the Considerate Constructors scheme. I shall return to this matter below.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the living conditions of the occupiers of 152 and 154 Mildenhall Road with particular regard to outlook and light; and
 - Whether the proposal would provide adequate living conditions for future occupiers, with regard to daylight, sunlight and outlook.

Reasons

Living Conditions – Existing

5. The proposed dwelling would be close to the rear elevation of Nos. 152-154 Mildenhall Road (Nos. 152-154), where rear windows face the appeal site. Although the outlook from those windows already looks onto the side elevation of the existing dwelling, and that of the terrace beyond, the side elevation of the proposal would be much higher, wider and closer than that of the existing dwelling. Moreover, the side elevation of the proposed dwellings would form a high boundary wall approximately 3.4 metres in height to the garden of Nos. 152-154. This would be much higher than the existing boundary wall, the extent of which is not typically found in the area. The result would be an overly oppressive and dominant feature on that boundary. This would have an overbearing effect upon the outlook from both the back garden and the rear facing habitable rooms for the occupiers of Nos. 154-152.
6. Furthermore, a Daylight and Sunlight Assessment¹ suggests that the proposal would cast significant shade onto the rear garden of Nos. 152-154 when measured at the spring equinox. Although the study suggests that the area would be less affected during the summer months when the garden is more likely to be in use, it would nevertheless be likely to restrict the occupant's use of the space for a significant part of the year. As a result, the enjoyment of the external amenity space for the occupiers would be unacceptably diminished.
7. The Daylight and Sunlight Assessment also indicates that light provided to the rear windows of Nos.152-154 would be affected by the proposal. Although the effect would not be excessive, in combination with the effect on outlook for occupiers of those rooms, the impact of the proposal would be unacceptable.
8. Thus, the proposal would have a harmful effect on the living conditions of the occupiers of 152-154 Mildenhall Road with respect to outlook and light. This would be contrary to Policies D3 and D6 of the London Plan 2021 and Policy LP2 of the Hackney Local Plan 2020 (HLP). Together these policies seek to ensure that development is designed to ensure that there are no significant adverse impacts on the amenity of occupiers, including delivering adequate outlook, privacy and amenity, sufficient daylight and sunlight and maximising the usability of outside amenity space.
9. Although the development is not a residential extension or alteration guidance contained within Hackney Residential Extensions and Alterations Supplementary Planning Document 2009 (SPD) provides useful guidance in relation to neighbouring amenity. For the reasons set out above, the proposal fails to follow the guidance set out in the SPD.
10. The Council refer to London Plan Policy D4 in relation to this main issue, but as this relates to masterplans and design scrutiny appropriate to larger development schemes. It has, therefore, not been a determinative factor in coming to my decision on this main issue.

¹ Daylight and Sunlight Assessment for the Development at No. 150 Mildenhall Road, Lower Clapton, London E5 0RZ Rev 5 - Herrington Consulting dated 26th October 2022

Living Conditions – Future

11. Both bedrooms in the smaller of the proposed dwellings and two of the three bedrooms in the larger unit would be located within a basement. The outlook from these rooms would be onto small lightwells with high walls, and in the case of the front bedroom covered by walk-on rooflights and grilles and solid roofs. These rooms would be significantly deficient in natural light, which according to the submitted Daylight and Sunlight Assessment, the basement bedrooms would fail to achieve at least 50% of the assessment points in the room for at least half of daylight hours.
12. Despite having tall openable windows, these rooms would be unduly oppressive and gloomy for occupiers to a degree which would not be appropriate for residential occupation in this location. Furthermore, as a result of the high walls and covered roofs, the outlook from the bedrooms would be oppressive and overbearing. The front bedrooms would be particularly problematic in this respect.
13. I therefore conclude that the proposal would fail to provide appropriately adequate living conditions for future occupiers of the proposed dwellings with respect to daylight, sunlight and outlook. Consequently, in this regard it conflicts with HLP policies LP1 and LP17 and Policy D6 of London Plan which together seek to ensure that development is of a high quality and provides layouts which are fit for purpose, with adequate daylight and sunlight appropriate to its context. It would also fail to comply with guidance contained within the Mayor of London's Housing Supplementary Planning Guidance 2017 which advises that natural light is vital to a sense of wellbeing in the home.

Other Matters

Planning Obligation

14. An executed Unilateral Undertaking (UU) dated 13 June 2023 has been submitted which would provide financial contributions towards affordable housing, carbon offset and highways works, would secure the development as car-free and commit the developer to the Considerate Constructors scheme. I have considered this in the light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (the Regulations).
15. The contribution of £3,000 towards carbon offset is in accordance with the standard charges sheet in the Council's adopted SPD based on the construction of 2 dwellings. I consider that this measure in the UU is necessary, related directly to the development and fairly related in scale and kind. As would the commitment to car-free development and the Considerate Constructors scheme. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework.
16. However, the contribution relating to affordable housing is not clear within the UU. The Council consider that the contribution should be £100,000. The appellant has not disputed this, however, the UU states that the contribution should be "either £50,000 or £100,000 as determined by the Inspector". This is a matter for the parties to agree and as such, I consider that as worded the UU does not provide the necessary level of clarity required as to the level of

contribution to be paid. Therefore, as presented to me, the UU does not pass the test that the payment is directly related to, or necessary to make the development acceptable. Furthermore, the contribution of £7,430.80 towards S278 highway works is not sufficiently detailed within the UU to precisely set out what the contribution would be used for or how the level of contribution has been reached. Therefore, I cannot be certain that the payment is directly related to the development.

17. Moreover, I have some concerns about the drafting of the document itself and thus whether the Council could rely on it to secure the contributions. However, as I intend to dismiss the appeal for other reasons, I have not pursued these matters further with the main parties.

Other Considerations

18. I acknowledge that the existing dwelling on the appeal site is a departure from the design, height and massing of other properties and the principle of residential development on the site is not in dispute. Nor is there any dispute that a basement could not be incorporated into the development. Furthermore, I acknowledge that small sites can make an important contribution to the supply of housing. However, this should not be at the expense of ensuring all development is appropriate, including ensuring adequate living conditions for existing and future occupiers.
19. The site is not statutory or locally listed, nor is it in a Conservation Area and it lies within Flood Zone 1. I note that the appellant states they had positive pre-application discussions. However, these are not binding on any future decision the local planning authority may make once a proposal has been subject to the formal planning process. Furthermore, my attention has also been drawn to a range of policies in the HLP which offer support for the proposal. These matters do not either singly or in combination, lead me away from my overall conclusion and do not outweigh the harm that I have otherwise found on the main issues.

Planning Balance and Conclusion

20. On the basis of the evidence before me, the Council's delivery of housing over the past three years is below its target. It is therefore necessary to engage Paragraph 11(d) of the National Planning Policy Framework (the Framework) which requires planning permission to be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
21. The proposal would result in the provision of one net additional dwelling and would be located in a highly sustainable location with easy access to services and facilities, including public amenity areas, and public transport, reducing the need to travel. Given the number of dwellings proposed, the benefit of one net additional dwelling where there is a shortfall would be limited.
22. I have found harm to the living conditions of both existing and future occupiers. That harm when taken together would be significant. With this in mind, the adverse impacts of granting planning permission would significantly and demonstrably outweigh its benefits when assessed against policies in the Framework as a whole. Therefore, it does not represent sustainable development for which the presumption in favour applies.

23. Consequently, there are no material considerations, individually or cumulatively, that would warrant taking a decision otherwise than in accordance with the development plan taken as a whole. I therefore conclude that the appeal should be dismissed.

KL Robbie

INSPECTOR