



Appeal Decision

Hearing held on 30 August 2023

Site visit made on 30 August 2023

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2023

Appeal Ref: APP/U5360/W/21/3267739

3 Boleyn Road, Hackney, London N16 8HR

- 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 Aurient N16 Limited against the Council of the London Borough of Hackney.
 - The application Ref 2020/1695 is dated 11 June 2020.
 - The development proposed is the demolition of part of existing roof structure, single-storey upward extension to provide 2 flats, with private amenity space and 2 secure cycle spaces per unit, together with external staircase within internal courtyard.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The description of development was revised during consideration of the application subject of this appeal and has been included in the Statement of Common Ground. I have utilised this description as it more succinctly describes the appeal scheme.
3. The Council failed to make a decision on the application subject of this appeal, although their Statement of Case identified six reasons which would have formed the basis of a refusal had it been in a position to do so. These six reasons are reflected in the main issues set out below.
4. A Financial Viability Appraisal¹ (FVA) was submitted by the appellant with the appeal. This is relevant to my considerations and the main parties have had an opportunity to consider its contents. I have therefore taken the FVA and the comments made at the hearing into account in reaching my decision.
5. The revised National Planning Policy Framework (Framework) came into force on 5 September 2023. I have taken this into consideration in determining this appeal.

Main Issues

6. The main issues are whether the proposal would:
 - make satisfactory provision for affordable housing, having regard to the viability of the scheme;

¹ S106 Management

- provide acceptable living conditions for future occupants, with regard to outdoor amenity space;
- make adequate provision for cycle storage;
- make adequate provision to meet the requirements of accessible housing;
- preserve or enhance the character or appearance of the Dalston Conservation Area; and
- make adequate provision for waste storage.

Reasons

Affordable Housing

7. Policy LP13 of the Hackney Local Plan 2033 (Local Plan) sets out the Council's policy towards the provision of affordable housing. It states the need for schemes below 10 units to provide on-site provision or payments in lieu. The appellant refers to paragraph 64 of the Framework which sets out that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. However, Framework paragraph 63 explains that where a need for affordable housing is identified, planning policies should seek such provision. Due to specific local circumstances and the significant need for affordable housing in Hackney, Local Plan Policy LP13 sets a lower threshold for affordable housing than the Framework. Notwithstanding the position adopted by other local authorities I find the Council's approach to seeking financial contributions to the provision of affordable housing in the Borough is consistent with the Framework.
8. The provision of a financial contribution is subject to viability considerations. The appellant submitted a FVA during the course of the appeal. This FVA was produced in support of another application on the appeal site and although there are differences with the appeal scheme, these were small and do not affect its relevance to the proposal before me.
9. The Council has concerns with the FVA, in terms of what should be an acceptable level of profit for the developer and in terms of establishing an acceptable Benchmark Land Value. Central to their concern is the FVA is significantly out-of-date and being over two years old, does not reflect current market conditions.
10. The FVA was prepared before the war in Ukraine, and the subsequent well publicised cost of living crisis, but the actual effects of these events on the viability of the scheme have not been adequately demonstrated in the evidence before me. I note the appellant is of the view that economic viability has got significantly worse since the time the FVA was prepared, but it was evident from discussions that certain values, such as the developer profit may be different now. The National Planning Practice Guidance (PPG) states² any viability assessment accompanying a planning application should be based upon and refer back to the viability assessment that informed the plan. The

² Paragraph: 008 Reference ID: 10-008-20190509

appellant utilised the 18% profit margin adopted by the Council's Viability Study³, but this document also states that individual schemes may require lower or higher profits, depending on site specific circumstances. The same paragraph of the PPG also states that the applicant should provide evidence of what has changed since the viability assessment that informed the plan.

11. In the absence of an updated position that takes account of the effects of the war in Ukraine, the cost of living crisis, and current market conditions, I cannot agree with any certainty on the outcome of the FVA and that the appeal scheme is unviable with an affordable housing financial contribution.
12. This affordable housing financial contribution is necessary to make the development acceptable in planning terms. The submitted Unilateral Undertaking does not provide a financial contribution towards affordable housing and the proposal would therefore fail to accord with Local Plan Policy LP13 and Policies GG4 and H4 of The London Plan which seek the delivery of affordable housing.
13. For the reasons given above, I conclude that the proposed development would not make satisfactory provision for affordable housing, having regard to the viability of the scheme. As such, it would conflict with the aforementioned Local Plan and The London Plan Policies.

Living Conditions

14. One of the two proposed flats, Flat 40, would be provided with a single area of private amenity space. This space would also provide cycle parking provision for this flat. Whilst not everyone will have access to a bicycle, and this is a matter that I return to below, if this space was utilised for the provision of cycle parking, it would considerably reduce the outdoor amenity space available to the future occupiers of this flat. The bicycles could be moved to create space for sitting out in, but I do not consider that such an arrangement, that requires frequent moving of bicycles, would represent a well-designed space that would function well in providing outdoor amenity for future residents. Rather, the size and the practical use of this external amenity area would result in a poor standard of outdoor amenity space which would be harmful to future occupants. Communal amenity space is available on-site and a community garden is nearby, but this does not replace or negate the need for the provision of private amenity space.
15. I conclude therefore that the proposed development would fail to provide satisfactory accommodation for its future occupiers with regard to amenity space provision. As such, it would be contrary to Policies LP1 and LP17 of the Local Plan and Policy D6 of The London Plan, which require, amongst other matters, for development to provide adequate private outdoor space. It would also be contrary to paragraph 130 of the Framework, which sets out a need to ensure a high standard of amenity for existing and future users.

Cycle Storage

16. The cycle stores for each of the two proposed flats would be located on the terrace areas that would provide access to each of the residential units. Although they would be partly covered and could be secured, future occupiers

³ London Borough of Hackney: Small sites affordable housing contribution – Viability Study (BNP Paribas Real Estate) 2019

would have to negotiate a number of flights of steps to access the storage spaces. This would not therefore be a convenient cycle parking facility. I appreciate there are shops and services nearby, but the requirement for cycle parking is clearly set out by relevant policies, including Policy LP42 of the Local Plan and Policy T5 of The London Plan.

17. A communal part of the building on the ground floor could accommodate bicycles but this area is not however used by existing occupiers of other flats in the appeal building due to the distance from most of the flats. This ground floor space would also be significantly detached from the two flats that are subject of this appeal and would not form suitable cycle storage provision for the proposal.
18. I therefore conclude that the proposal would not make adequate cycle parking provision and as such, it would not comply with Local Plan Policy LP42 and Policy T5 of The London Plan, which seek, amongst other matters, cycle parking to be secure, accessible, convenient and weatherproof.

Accessible Housing

19. Policy D7 of The London Plan sets out the need for residential development to provide suitable housing, including for disabled people, older people and families with young children by ensuring that at least 10% of dwellings meet Building Regulation requirement M4(3) 'wheelchair user dwellings' with all other dwellings to meet Building Regulation requirement M4(2) 'accessible and adaptable dwellings'.
20. The Council has raised concerns that step-free access is not being provided as the lift access in the appeal building is not proposed to be extended. However, there is no level access to the lift currently from the main entrance, and as the proposal relates to a roof extension on an existing building, significant works would be required to meet Building Regulation requirement M4(2), and as such, this would not be a practical proposition. Elsewhere in the building that the appeal site forms part of, there is wheelchair accessible housing, and as such, there is a choice of accessible and adaptable accommodation available within the wider building.
21. I therefore conclude that despite the conflict there would be with Policy D7 of The London Plan and Policy LP1 of the Local Plan, insofar as they seek residential development to meet specific Building Regulations requirements and to be accessible for all, I consider that the particular circumstances of the appeal proposal, as described above, outweigh the policy conflict on this issue. Although reference is made to the Mayor of London's Housing Supplementary Planning Guidance, I haven't been provided with details of this document.

Character and Appearance

22. The appeal site is situated in the Dalston Conservation Area (CA). It forms part of a long terrace that the Council state has been identified as a 'Building of Townscape Merit'. At street level, the terrace contains a range of commercial uses, with the frontages to Boleyn Road having been subject to much alteration. On the upper floors to the same frontage, the repetitive fenestration, horizontal banding and continuous parapet, as well as other decorative features give the terrace an attractive appearance. This along with

the linear form of other long rows of terraces, make a positive contribution to the character and appearance of the CA.

23. The proposed roof extension would be setback from the parapet along the Kingsland High Street frontage, a similar distance to the setback of the existing mansard roof structure on the remainder of the terrace to the south. Unlike this neighbouring development, the proposal would occupy a corner location and it would be closer to the parapet edge along Boleyn Road than the one to Kingsland High Street. It would therefore be seen in certain views from street level, but it would not break the roofline given the presence of other roof structures, including the mansard roof to Flat 22 along the Boleyn Road frontage.
24. The proposal would not alter the existing parapet wall and the other features on the upper floors to the Kingsland High Street and Boleyn Road frontages would remain unaltered. The proposed design approach of the roof, including the flat roof element and the use of grey hanging slates would reflect those on the existing building and elsewhere in the CA, as would the front terrace to the proposed flat 41 which would be contained by the parapet wall.
25. To the rear, the scheme would add a metal staircase and walkway that would rise up a number of floors to provide access to the proposed flats. These would add further metal structures, but given the extensive walkways and staircases in the rear courtyard area of the appeal building, this element of the proposal, which would not be visible from surrounding public vantage points, would not be harmful to the character and appearance of the CA.
26. I therefore conclude that the proposal would preserve the character and appearance of the CA and as such, it would not be contrary to Policies LP1, LP3 or LP17 of the Local Plan or Policies D3, D6 or HC1 of The London Plan, which seek, amongst other matters, development that is high quality which conserves the significance of heritage assets. It would also not be contrary to the Residential Extensions and Alterations Supplementary Planning Document (SPD) or Section 16 of the Framework, which states that great weight should be given to an asset's conservation.

Waste Storage

27. The appeal proposal would utilise an existing refuse storage area that serves existing flats in the appeal building. There is a difference between the main parties on the required waste storage capacity for the total existing residential units but utilising the Council's up-to-date refuse and recycling storage guidance, there is currently a deficiency in the storage capacity for existing units.
28. Despite this, there is nothing in the evidence before me of any problems arising with this existing facility. Although the addition of two further flats will increase the need for waste and recycling storage, this is not a major development or one that will generate large amounts of waste. I do not therefore find any concerns with the proposal in this regard and as the appellant indicated, given the existing store is communal, the frequency of the collections could be increased to accommodate the additional refuse.
29. I therefore conclude that the proposed development would be acceptable in relation to waste storage and as such, the scheme would not conflict with

Policy D6 of The London Plan, which seeks, amongst other matters, adequate storage space.

Other Matters

30. There is no dispute on the housing mix proposed and the Council has raised no concerns in relation to harm to the living conditions of neighbouring occupiers. The size of the proposed flats would be acceptable in relation to internal space standards, and on a number of other areas such as biodiversity. The completed and signed Unilateral Undertaking addresses matters including the carbon offset contribution and securing car free development. These are all neutral matters and not ones which weigh in favour of the development.

Conclusion

31. The proposal would add two additional homes to the supply of housing in the area in an accessible location on a previously developed site. The proposed development would also preserve the character and appearance of the CA. The appellant has set out the visual benefits of bridging the gap between existing mansards, but I consider this, along with other referenced matters including on waste storage provision to be neutral considerations and not ones which weigh in favour of the development. The proposal would not be accessible for all, but as the development is an extension to an existing building where there is no step free access to the existing upper floors, I do not consider it necessary for the proposal to make provision for accessible housing. This matter outweighs the technical policy conflict on this issue in this case.
32. The proposal would fail to provide satisfactory provision for affordable housing, which carries significant weight given the pressing need for such in Hackney and across London. It would also fail to provide satisfactory accommodation for its future occupiers in terms of outdoor amenity space and cycle storage provision.
33. As such, the proposed development would not accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this. Therefore, I conclude that the appeal should be dismissed and planning permission refused.

F Rafiq

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ian Coward Collins Coward

Richard Whitehorn Aurient N16 Limited

Robin Furby S106 Management

FOR THE LOCAL PLANNING AUTHORITY:

Erin Glancy London Borough of Hackney

David Danes London Borough of Hackney

James Carney London Borough of Hackney