



Appeal Decisions

Site visit made on 3 October 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2023

Appeal Ref: APP/U5360/W/22/3296920

14 Andre Street, London E8 2AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Class AB of Part 20 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Charnock, DCP London against the decision of London Borough of Hackney.
 - The application Ref 2021/1856, dated 8 June 2021, was refused by notice dated 15 February 2022.
 - The development proposed is prior approval for the erection of one additional storey to provide 3 x new residential units (Use Class C3) (For consultation purposes the application is submitted under Class AB, Schedule 2, Part 20 of the GPDO).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the purposes of my Decision, I have taken the description of the proposal from the Council's decision, which is also consistent with the appellant's appeal form.
3. As part of the appeal submissions, the appellant has introduced the following revised drawings: Proposed Fourth Floor Plan (Drawing Ref. 0619-CDA-ZZ-XX-DR-A-05-0100 Rev03); Proposed Andre Street Elevation with New Fourth Floor (Drawing Ref. 0619- CDA-ZZ-XX-DR-A-05-3200 Rev2) and Proposed South Elevation with New Fourth Floor (Drawing Ref. 0619-CDAAZ-XX-DR-A-05-3202). Based on my observations these drawings do not significantly differ from those which were considered by the Council during the application stage.
4. The provision of cycle parking for the three additional residential units along the ground floor of the appeal property, is shown on Drawing Ref. 0619-CDA-ZZ-XX-DR-A-05-2010 which was proposed through the now refused separate planning application 2021/1818. This drawing has been submitted as part of the appeal submissions.
5. I have accepted the above drawings in determining this appeal and do not consider that the interests of any party have been prejudiced by my having done so.

Background and Main Issue

6. The appeal property is a four-storey building comprising flats, commercial space (offices) and ancillary facilities.

7. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO') under Class AB of Part 20 of Schedule 2, sets out that the following development is permitted: Development consisting of works for the construction of new dwellinghouses immediately above the topmost storey on a terrace building.
8. Paragraph AB.2.(1) of the GPDO indicates that Class AB development is permitted subject to the condition that before beginning the development, the developer shall apply to the local planning authority for a determination as to whether the prior approval of the authority will be required for certain matters.
9. The Council has raised issues with regard to prior approval matters: (a) transport and highways impacts of the development and (g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light. The Council has not argued that the proposal fails to comply with Class AB of the GPDO in other respects, and I have no compelling reasons to find otherwise.
10. Accordingly, the main issue is whether the proposal benefits from the provisions of permitted development under Schedule 2, Part 20, Class AB of the GPDO with regard to: (a) transport and highways impacts of the development and (g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light.

Reasons

Transport and highways impacts.

11. On the information before me, the original permission for the appeal property was for a car-free development with the exception of one on-site disabled persons parking bay. No additional car parking is proposed as part of the proposed development. To this end, and to that ensure the provision of the additional flats would not impact the transport and highways network, the main parties are in agreement that the proposed development needs to make adequate provision for cycling facilities. The appeal site is also within an existing Controlled Parking Zone. On this basis, the main parties are in agreement that the continuation of the site as 'car free development' is necessary. This needs to be secured via a legal agreement.
12. In accordance with the Council's requirements, as set out under policy LP42 of the Hackney Local Plan (2020) ('LP') the proposed additional flats generate a requirement for 6 cycle spaces.
13. As shown on Drawing Ref. 0619-CDA-ZZ-XX-DR-A-05-2010, there is sufficient space to accommodate six double stands, or space for 12 additional cycles, in excess for that required for the proposed additional floor. As such, I see no reason why the additional cycle spaces could not be secured through a condition if the appeal were to succeed.
14. The new flats would generate additional demand for car parking and parking permits, adding to existing parking stress in the area. Indeed, although my visit represents a snapshot in time, there was limited parking availability in the area, resulting in some inconsiderate parking and congestion.
15. Whilst the appellant has provided a form agreeing to signing up to a legal agreement, there is no signed and completed legal agreement before me to

ensure that residents of the proposed flats would be prevented from obtaining parking permits to ensure that the proposal would be a car free development.

16. Therefore, in the absence of a legal agreement to secure car-free housing, I cannot be certain that the development would not increase demand for on-street parking to the detriment of existing parking stress in the area resulting in transport and highways impacts, contrary to the requirements set out in Paragraph AB.2.(1)(a) of Class AB of Part 20 of Schedule 2 of the GPDO.

Amenity of existing building and neighbouring premises

17. The proposed balcony for flat 12 would be at a higher level than adjoining buildings. In particular, relative to the upper floor accommodation and amenity space associated with a flat at an adjoining building (12 Andre Street).
18. However, the proposed balcony to flat 12 would be set-back from the existing west elevation of the appeal property. Also, the terrace associated with the adjoining flat at 12 Andre Street is enclosed along its perimeter by a high obscured glass screen. Furthermore, as part of the appeal the appellant has advised that flat 12 could include the provision of a planted privacy screen. This could be secured by a condition if the appeal were to succeed. Overall, this arrangement would mitigate any potential overlooking and loss of privacy between these flats.
19. To assess the impact of the proposed additional storey on flat 9 within the appeal property, an updated Daylight/Sunlight Report has been submitted. This is based on the 'Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice' (2011)' ('BRE Guidance').
20. The principal assessment of daylight is based on the calculation of the vertical sky component ('VSC') to an affected window in both the existing and proposed condition. In summary, the VSC is the amount of light received at the centre of a window with the maximum that can be received on a vertical face being 39.6%. In respect of VSC, if with the new development in place it would be less than 27% and less than 0.8 times its former value then occupants of the existing building will notice the reduction in the amount of skylight.
21. Notwithstanding that flat 9 is served by a smaller side facing window, the VSC associated with the main and substantially larger glazed opening which serves the living/dining and kitchen area for this flat is about 34.15%. As a consequence of the proposed balcony, the VSC reduces to nearly 9.89%. This would be significantly below 27% and is significantly below 0.8 of the original value. Consequently, the living/dining and kitchen area would feel substantially gloomier and there would be a greater reliance on artificial lighting for greater periods.
22. I have also taken account of paragraph 5.14 of the LP. However, in this case irrespective of the inner urban location of the appeal property, the existing daylight received (VSC) for flat 9 is 34.15%. As such, the existing arrangement is acceptable and would be significantly worsened as a consequence of the proposal.
23. Although the internal illuminance (average daylight factor) for the living room at flat 9 exceeds that set out in the BRE Guidance, the average daylight factor is primarily used for calculating daylight provision and therefore is not

appropriate to calculating the loss of daylight. As such, I attach limited weight to this.

24. Consequently, and irrespective of the quantum of daylight to the terrace for flat 9 being unaffected, the proposed development by virtue of its scale and siting would have an unacceptable effect on the amenity of the occupiers of flat 9 in respect of loss of light to the main living space for this flat, contrary to the requirements of paragraph AB.2.(1)(g) of Class AB of Part 20 of Schedule 2 of the GPDO.

Conclusion

25. For the above reasons, the proposal does not benefit from the provisions of permitted development under Schedule 2, Part 20, Class AB of the GPDO and the appeal should be dismissed.

M Aqbal

INSPECTOR