



Appeal Decision

Site visit made on 3 October 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2023

Appeal Ref: APP/U5360/W/22/3297578

Site of a garage on the south side of Southborough Road, London E9 7EE.

- 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 Michael Birmingham against London Borough of Hackney.
 - The application Ref 2021/2507, is dated 8 August 2021.
 - The development proposed is described as: 'Change of use from storage/garage to single dwelling house, within the existing footprint (except that the parapet to the first floor roof is raised 200mm and a basement added) and retaining as much of the existing structure as possible. See the Design and Heritage Statement: for a fuller description.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address of the appeal site and the description of the proposal from the appellant's application form.
3. I have determined this appeal on the basis of the revised drawings submitted during the planning application stage.
4. Whilst no planning consent has been provided for the existing building at the appeal site, there is nothing to suggest that this is unlawful or that any formal enforcement action is being pursued in respect of it. Therefore, and for the purposes of my Decision, I have proceeded with the appeal on this basis.

Background and Main Issues

5. Although there is no formal decision from the Council, it has offered putative reasons for refusal. Based on these, the main issues are:
 - i) Whether or not the proposal would preserve or enhance the character and appearance of the Victoria Park Conservation Area ('CA');
 - ii) Whether the proposal can provide an acceptable quality of accommodation;
 - iii) Whether the proposal would secure a car free development;
 - iv) Whether the proposal makes acceptable provision for affordable housing; and,
 - v) Whether the proposed development supports zero carbon emissions.

Reasons

Character and appearance

6. The appeal site is a small plot with a broadly triangular footprint, forming the gap between 56 Southborough Road and 71 Lauriston Road. This plot is occupied by a building currently in use as a garage and storage space ('the extant building'). The extant building is set back from the highway behind a modest frontage. The appeal site is located within the CA.
7. The CA is centred about a 19th century landscaped park and beyond this largely comprises an interesting mix of high-quality houses dating from the 18th, 19th and 20th centuries. In particular, Southborough and Lauriston Roads are well represented by attractively designed and detailed houses of the mid-Victorian era. The terraces along these roads are notable because of the use of predominantly London stock brick, the form and arrangement of fenestration and enclosed and landscaped frontages. Together, these create a distinctly attractive and cohesive street scape.
8. As such, the significance of the CA is largely derived from its history, the park and high-quality architecture.
9. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a requirement that special attention should be paid to the desirability that the character or appearance of the conservation area should be preserved or enhanced. Paragraph 195 of the National Planning Policy Framework ('the Framework') also requires me to assess the particular significance of any heritage asset that may be affected by a proposal.
10. Based on the submitted plans, the new dwelling would largely utilise the footprint and scale of the extant building but with a slight increase in height along part of the building to facilitate a parapet and the creation of a basement area.
11. As already stated, the appeal site is formed by a gap between two blocks of development. This layout is replicated in the area. I observed that the sizes and treatments of such gaps vary. Whilst there are some which are free of development and incorporate landscaping, there are others which include buildings of different scales and forms, as illustrated in the submitted Design and Access Statement. Indeed, the appeal site is already occupied by a building which reflects the varied arrangement of such spaces in the vicinity.
12. The extant building is largely constructed of London stock brick and matches that used in nearby dwellings. Therefore, this building is settled within the street scene and forms part of the character and appearance of the CA.
13. However, the taller section of the new dwelling, albeit recessed from its frontage would comprise a timber structure which is shown to be rendered on the submitted drawings. This render finish would contrast with the brickwork. Furthermore, this would highlight an elevation which is to incorporate an uncharacteristic bay window at first floor level. This window also relates poorly to the uncharacteristic traditional garage door with a large glazed window along the frontage of the property. In addition, whilst the frontage to the proposed dwelling incorporates some landscaping this would be largely dominated as a vehicle parking area, which would be inconsistent with the prevailing

- arrangement of frontages associated with dwellings in the area. Consequently, the proposed dwelling would appear incongruous within the street scape.
14. Although the fenestration along the front of the building would not be seen in the context of the rear elevation, the traditional arrangement of the frontage would be inconsistent with the modern, largely glazed rear elevation of the proposed dwelling. As such, the overall design lacks cohesiveness.
 15. The proposed solar panels would be located along a section of roof which is set-back from the highway and largely screened by the parapet and therefore would not be particularly apparent from the highway. Whilst the solar panels may be visible from upper floor windows of nearby dwellings, given the modest extent of these and siting on an existing roof structure, I am not persuaded that these would cause any unacceptable visual harm or glare.
 16. The activity associated with the extant building, as altered, is likely to intensify as a consequence of its residential use. Even so, the extent of this, in association with a modest dwelling in a predominantly residential area is unlikely to result in any unacceptable harm to the area.
 17. For the above reasons, the scale and use of the proposed building would not unacceptably harm the street scape or the CA.
 18. Nevertheless, because of its detailed design, including external materials and the form and arrangement of fenestration and its frontage, the overall appearance of the proposed dwelling would relate poorly to the area and does not reflect high quality design. As such, the proposed dwelling would harm the character and appearance of the area and the significance of the CA.
 19. The harm the proposal would cause to the significance of the CA would be less than substantial. Paragraph 202 of the Framework states that where a proposal would lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal.
 20. In this case, whilst the proposal would deliver an additional dwelling and there would be some social and economic benefits arising from this. Given the modest scale of the proposal, such benefits would be limited.
 21. Therefore, in my view, the proposed limited benefits are not forceful enough to outweigh the less than substantial harm that I have identified.
 22. Drawing on the above reasons, the proposal would be contrary to policies D1, D3 and HC1 of the London Plan 2021 and policies LP1 and LP3 of the Hackney Local Plan (2020) ('LP'). Together, these policies require development to comprise high-quality design and attractive materials, and to preserve or enhance the character and appearance of conservation areas.

Quality of accommodation

23. On the information before me, Policy D6 of the London Plan 2021 sets out a minimum ceiling height of 2.5m for at least 75% of the gross internal floor area in order to ensure that new housing is of adequate quality, especially in terms of daylight penetration, ventilation and cooling, and sense of space.
24. The proposed ceiling heights at basement and first floor level are 2.3m and comprise more than 50% of the gross internal floor area.

25. Based on the Energy and Sustainability Statement ('ESS'), ventilation would be achieved through windows and fans provided for the cooker, shower room and WC. The part sedum roof is also intended to assist in limiting overheating. Mitigation measures such as suitable glazing ratio and low emissivity glass, high levels of insulation and minimisation of internal heat gains would also be implemented at the dwelling. Consequently, the ESS concludes the risk of overheating to be slight. In the absence of any evidence to the contrary, I consider this to be acceptable.
26. Nonetheless, because of the limited ceiling heights and single aspect design of the basement, it is unclear from the information available whether this and the remainder of the proposed dwelling would receive adequate daylight. In reaching this conclusion, I have had regard to the split-level design of the proposed dwelling, the inclusion of the large rooflight to the ground floor roof at the front and the submitted 3D section. Although the Council may not have requested a daylight or sunlight assessment, the onus is on the appellant to clearly show that the proposed development provides acceptable levels of daylight.
27. Consequently, because of the limited ceiling heights and insufficient information relating to the daylight available for the proposed accommodation, it has not been clearly shown that the proposed residential accommodation would be of an acceptable quality for future occupiers, contrary to Policy D6 of the London Plan 2021.

Car free development

28. The area to the front of the proposed dwelling would be utilised for a car parking space. To reduce car usage and promote active travel, Policy LP45 of the LP, requires all new developments in the Borough to be car-free, with on-site parking limited to: parking for disabled users; or essential operational or servicing needs, justified by a Transport Assessment.
29. The appellant advises that the owner of the appeal property is registered disabled. I am mindful of the Public Sector Equality Duty arising from section 149 of the Equalities Act 2010 (the Act). The Act requires me to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Amongst other things, for the purposes of the Act protected characteristics include disability.
30. Nevertheless, I have no substantive evidence to support the assertion that the future occupier of the proposed dwelling is registered disabled. In any event, there is no certainty that the proposed dwelling would be occupied by this person or someone else who was registered disabled in perpetuity. Also, no mechanism has been identified to ensure that the car parking space would only be used for the benefit of a disabled person. Furthermore, there is nothing to suggest that any disabled occupant of the new dwelling would not be allowed a parking permit to utilise on-street parking. Therefore, the circumstances of the proposed resident do not outweigh the requirements of the development plan to secure car free developments and the wider benefits associated with this.

31. Similarly, there is no certainty that the car parking space would only be used for an electric vehicle. Also, there is nothing to suggest that alternative electric vehicle charging points are not available elsewhere in the area.
32. Consequently, the proposal conflicts with the aims of Policy LP45 of the LP.

Affordable Housing

33. As the proposal would result in a new residential unit, in accordance with Policy LP13 of the LP, the proposal is required to provide on-site provision or payments in lieu up to the equivalent of 50% of housing delivered as affordable housing, subject to viability.
34. No on-site provision of affordable housing is proposed. Therefore, in the absence of any viability assessment and a legal agreement to secure a contribution towards affordable housing, the proposal fails to support any affordable housing provision, contrary to Policy LP13 of the LP.

Achieving zero carbon emissions

35. The ESS indicates that the proposed dwelling is estimated to achieve about a 36.9% reduction in site-wide regulated CO2 emissions beyond the requirements of the Building Regulations - Part L baseline.
36. Therefore, and in accordance with Policy LP55 of the LP, because the proposal would not secure a zero-carbon emission development, which aims to support the Councils objective of contributing to reducing carbon emissions from the Borough by 80% by 2050, the appellant is required to make carbon off-setting payments via a legal agreement.
37. The ESS includes a calculation for a Total Offset Payment. Irrespective, no legal agreement has been provided to secure this. Accordingly, the proposal fails to support a zero-carbon emission development and conflicts with Policy LP55 of the LP.

Other Matters

38. Although the main parties have referred to previous planning applications and proposals relating to the appeal site, I have limited information in respect of these to draw any meaningful comparisons and conclusions.
39. The appellant has suggested further amendments to the submitted scheme to address some of the concerns raised under the main issues. However, the full details of these are not before me. Similarly, notwithstanding the appellant's reasons for not providing the above-mentioned legal agreements, these are also not before me.
40. I have taken account of the appellant's concerns about the administration and lack of progress with their application during the planning application stage. These matters, however, are for the Council and do not alter my findings on the main issues.
41. Concerns about overlooking and loss of privacy to neighbours arising from the proposal were considered by the Council but did not form part of its putative reasons for refusal. Nevertheless, as I am dismissing the appeal for the reasons set out above, it is not necessary for me consider these further.

Conclusion

42. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR