



Appeal Decisions

Site visit made on 20 November 2023

by G D Jones BSc(Hons) DipTP DMS MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal A - Ref: APP/U5360/W/23/3318665 145 Albion Road, Hackney N16 9JU

- 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 Ruth Whitehead against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2022/1868, dated 28 July 2022, was refused by notice dated 22 September 2022.
 - The development proposed is described as erection of a two storey garden house to provide 1 x self contained 2 bed dwelling, fronting Church Walk with associated replacement of Church Walk gates, cycle storage and landscaping.
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Appeal B - Ref: APP/U5360/Y/23/3318674 145 Albion Road, Hackney N16 9JU

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Ruth Whitehead against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2022/1869, dated 28 July 2022, was refused by notice dated 22 September 2022.
 - The works proposed are described as erection of a two storey garden house to provide 1 x self contained 2 bed dwelling, fronting Church Walk with associated replacement of Church Walk gates, cycle storage and landscaping.
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Decisions

1. **Appeal A is dismissed.**
2. **Appeal B is allowed and listed building consent is granted** for the erection of a two storey garden house to provide 1 x self contained 2 bed dwelling, fronting Church Walk with associated replacement of Church Walk gates, cycle storage and landscaping at 145 Albion Road, Hackney N16 9JU in accordance with the terms of the application Ref: 2022/1869, dated 28 July 2022 and subject to the conditions at the attached Schedule.

Preliminary Matters

3. As the proposals relate to a listed building, I have had special regard to sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. The first reason for refusal relating to the Appeal A planning application refers to the effect of the proposed development on the character and appearance of 'the conservation area'. However, the wider evidence indicates that the site is

not within or close to any conservation area. I have, therefore, assessed Appeal A on that basis.

Main Issues

5. There is one main issue that is common to Appeal A and B, namely the effect of the proposals on the grade II listed building 143 and 145 Albion Road. In respect to Appeal A only there are also the following main issues:
 - The effect of the proposed development on the living conditions of neighbouring occupants, having particular regard to noise from the proposed air source heat pump and to sunlight; and
 - The absence of a legal agreement to secure planning obligations in respect to affordable housing, car-free housing and the Carbon Offset Fund.

Reasons

Listed Building

6. The Council's submissions refer to the houses that form the Listed Building as being *characterised by their substantial gardens and verdant setting, and this is part of their significance as large suburban villas from 1840*. I have found no good reason to disagree. The wider evidence indicates that other factors also contribute to its significance and special interest as a heritage asset, which I also broadly agree with. I have, though, found no basis to conclude that these other contributors to the Listed Building's significance would be detrimentally affected by the appeal development / proposed works. My assessment, therefore, focusses primarily on the matters that contribute to the Listed Building's significance as expressly raised by the Council, as identified above.
7. While the proposed development is not insubstantial, it would, nonetheless, allow a significant proportion of the rear garden of No 145 to be retained. Additionally, rather than severing the garden and creating a separate unit from the host property, the proposed scheme would share this space with No 145. In this way the integrity of the property's remaining grounds would be maintained, while a characteristically large area of garden would be retained.
8. Some verdancy would be lost as a result of the appeals scheme. However, given that much of the area in question is currently occupied by hardstanding and outbuildings, any loss would not be significant and could be mitigated through new planting, such that the Listed Building's verdant setting need not be diminished.
9. Moreover, due to its modest scale relative to the host building and distance from it, the new building would appear subservient to the Listed Building. Indeed, the detailed design of the proposed scheme does not attempt to either compete with the Listed Building or to replicate it. Rather, it would form a modest, yet distinct and positive addition to the townscape, allowing the Listed Building to remain clearly legible as an important heritage asset.
10. For the reasons outlined above, therefore, the proposal would preserve the special historic interest of the listed building 143 and 145 Albion Road, thus satisfying the requirements of the Act. Consequently, in that regard, it accords with Policy HC1 (Heritage conservation and growth) of the London Plan 2021 and Policies LP1 (Design Quality and Local Character) and LP3 (Designated

Heritage Assets) of the Hackney Local Plan 2020 (the HLP), as well as with the National Planning Policy Framework.

11. I note that there is an extant planning permission for a single storey building in roughly the same location as the proposed appeals building would stand. For the avoidance of any doubt, it is worth clarifying that, while I note that that approved scheme might represent a 'fallback' option that could potentially be built if either or both appeals were to be dismissed, it has not influenced my assessment as outlined above or altered the outcome of either appeal in anyway.

Living Conditions

12. Regarding potential noise from the proposed air source heat pump, the appellant's uncontested Acoustic Assessment indicates that the calculated noise level for the equipment would be at least 10dB below the background sound level during operating times when assessed at 1m from the closest noise-sensitive windows. In any event, air source heat pumps are becoming a common feature of the urban environment. As a matter of principle, there is no good reason to believe that the introduction and operation of such equipment could not be done without harming the living conditions of residents of the surrounding area subject to controls/limits that could be secured via planning condition.
13. Furthermore, the appellant's updated Daylight and Sunlight Report indicates that the proposed development would have an acceptable effect on sunlight to neighbouring windows, including the ground floor windows of 151a to 151c Church Walk. While I recognise that, due to the proposed development's scale and siting, there would be some impact on light to neighbouring properties, there is no evidence-based reason to disagree with the updated Report's findings. I also note that this document and its conclusions have not been challenged by the Council.
14. Accordingly, the proposed development need not have a significant effect on the living conditions of neighbouring occupants, including in respect to noise from the proposed air source heat pump and to sunlight. Therefore, in these regards, it would not conflict with Policy D4 (Delivering good design) of the London Plan 2021 or Policy LP2 (Development and Amenity) of the HLP.

Legal Agreement Matters

15. It appears to be common ground between the main parties that in order to make the appeal development acceptable in planning terms planning obligations relating to affordable housing, car-free housing and the Carbon Offset Fund would be necessary. The appellant has advised, however, that the completion of the legal agreement, which had been intended to secure those obligations, has not proved possible.
16. In my view each of the matters that the legal agreement had been intended to secure would be necessary to make the development acceptable in planning terms. Without such planning obligations suitable mitigation of the effects of the proposed development would not be secured. No alternative mechanism for securing the proposed mitigation has been put to me and I have found none myself.

17. Accordingly, the proposals would fail to secure suitable affordable housing, car-free housing and Carbon Offset Fund mitigation contrary, in those respects, to Policies H4 (Delivering affordable housing), T6 (Car parking) and SI 2 (Minimising greenhouse gas emissions) of the London Plan 2021 and to Policies LP13 (Affordable Housing), LP45 (Parking and Car Free Development) and LP55 (Mitigating Climate Change) of the HLP, as well as to Hackney's S106 Planning Contributions Supplementary Planning Document 2020.

Other Matters

18. In respect to Appeal A, other matters have been raised by interested parties, however, these do not alter the outcome of either appeal.

Conditions and Conclusions

19. In addition to the standard time limit condition, in respect to Appeal B, the Council has requested conditions requiring that the works are carried out in accordance with the approved plans and relating to the appearance of the proposed works, including facing materials. Such conditions would be necessary to provide certainty and in the interests of preserving the special interest of the listed building, respectively. Nonetheless, the third suggested condition would require *all new work to match the existing adjacent work*. Yet, the adjoining development to the north has a markedly different appearance to what is proposed here. Accordingly, a condition to control approval of the detail of the facing materials and its implementation would be more apt.
20. Although the scheme would be acceptable in some respects, due to the failure to secure mitigation necessary to make the development acceptable in planning terms, **Appeal A is dismissed**.
21. Nonetheless, as outlined above, the proposed works would preserve the special historic interest of the listed building 143 and 145 Albion Road, such that **Appeal B should, subject to the identified conditions, be allowed**.

G D Jones

INSPECTOR

SCHEDULE OF CONDITIONS FOR APPEAL B - REF APP/U5360/Y/23/3318674:

- 1) The works hereby permitted shall not begin later than three years from the date of this permission.
- 2) The works hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details.
- 3) The works hereby permitted shall not commence until details and / or samples of the facing materials to be used in the construction of the consented scheme have been submitted to and approved in writing by the Local Planning Authority. The scheme shall only be implemented in accordance with the approved details.
- 4) Prior to the commencement of works, detailed drawings and full particulars of the following shall be submitted to and approved in writing by the Local Planning Authority. The works shall not be carried out otherwise than in accordance with the details thus approved:
 - a. Details of the doors in the form of 1:20 sections and elevation and 1:5 details;
 - b. Details of windows in the form of 1:20 elevations and sections demonstrating the position of the window within the opening and 1:5 details;
 - c. Details of the proposed refuse, recycling and cycle storage; and
 - d. Full details of the landscaping proposals.