



Appeal Decision

Site visit made on 24 October 2023

by **K Lancaster BA (hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 December 2023

Appeal Ref: APP/U5360/W/23/3319607

50 Olinda Road, Hackney, London N16 6TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by EALINGRYDAL LTD against the decision of the Council of the London Borough of Hackney.
- The application Ref 2023/0136, dated 18 January 2023, was approved on 22 March 2023 and planning permission was granted subject to conditions.
- The development permitted is the erection of a first-floor rear extension. The conditions in dispute are Nos 4, 5 and 6 which state that: (4) *'Prior to the use of the approved roof extension details in the form of elevation plans and detailed specifications must be provided showing the proposed bee brick and nesting box';* (5) *Prior to superstructure works, detailed specification, a drainage layout and management & maintenance plan (where applicable) of at least one suitable drainage system (i.e., water butt with overflow, raingarden, bioretention planter box, living roof (substrate depth of 80-150mm excluding the vegetive mat), permeable paving etc) shall be submitted to, and approved by the LPA, in consultation with the LLFA. If soakaways i.e., plastic modules and soakaway rings are used, an infiltration test must be carried out to ensure that the capacity of the soil is suitable for infiltration. It must be demonstrated that there will be no increase in surface water flow being discharged off site and an overall reduction in peak flow rate and volume'* and (6) *A scheme for the provision of and implementation of flood resilient and resistant construction details and measures for the site against surface water flood risk shall be submitted to and agreed, in writing with the LPA in consultation with the LLFA prior to the construction of the measures'.*
The reasons given for the conditions are: (4) *'To enhance local biodiversity and* (5) and (6) *'To ensure that the development will provide a sustainable drainage system. The condition is required to be discharged prior to the commencement of development to ensure that sustainable drainage is incorporated into the design of the development'.*

Decision

1. The appeal is allowed and the planning permission Ref 2023/0136 for the erection of a first-floor rear extension at 50 Olinda Road, Hackney, London N16 6TL granted on 22 March 2023 by London Borough of Hackney, is varied by deleting condition Nos 4, 5 and 6 and substituting condition No 1 for the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - OR.50.PR.101. REV A (Proposed Floor Plans - Ground & First Floor)
 - OR.50.PR.102. REV A (Proposed Front and Rear Elevations)
 - OR.50.PR.103. REV A (Proposed Side Elevations (1 & 2) and Section A-A)

Applications for costs

2. An application for costs was made by EALINGRYDAL LTD against the Council of the London Borough of Hackney. This application is the subject of a separate decision.

Preliminary Matters

3. The site has some recent planning history, including a planning permission¹ and lawful development certificate² which have been granted for alterations and extensions to the property. The approved works include a single storey rear extension and dormer extension. During my site visit it was apparent that building works to the property have commenced.

Background and Main Issues

4. Planning permission was granted for the erection of a first-floor rear extension, which includes condition No.4 requiring a nesting box and bee brick to be provided prior to the use of the roof extension. The permission also includes condition No.5 which requires a drainage; layout, management, and maintenance plan to be submitted and approved by the Council prior to substructure works taking place and condition No.6 which requires the submission and approval of scheme for the provision of and implementation of flood resilient and resistant construction details and measures for the site.
5. The Council considers that the conditions are reasonable and necessary to enhance local biodiversity and to ensure a sustainable drainage system is provided and incorporated into the design of the development. However, the appellant objects to the imposition of these conditions as they consider that they are not necessary, reasonable, or relevant to the development permitted.
6. Therefore, the main issue of this appeal is whether conditions Nos. 4, 5 and 6 are reasonable, necessary, and relevant to the development in permitted in the interests of enhancing local biodiversity and to achieve satisfactory sustainable drainage arrangements.

Reasons

Condition No.4

7. Policy LP47 of the Hackney Local Plan 2020 (HLP) states that all development schemes involving buildings with an eaves height or roof commencement height of 5 metres and above are required to provide nesting boxes for swifts, sparrows, starlings and/or bats as appropriate to help preserve endangered urban biodiversity in Hackney. This policy seeks to enhance biodiversity by making provision for nesting of endangered wildlife species within the Borough.
8. The eaves height of the appeal property is disputed between the parties with the appellant stating that falls below the 5 metre threshold, measuring just 4.7 metres in height. The Council states that the eaves height of the building ranges from 4.7 metres at its lowest point to 5.47 metres at its highest. The 'eaves height' height is usually measured from ground level at the base of the outside wall to the point where that wall would meet the upper surface of the roof slope. The development permitted involves a first-floor extension above

¹ Application Ref: 2023/0141

² Application Ref: 2023/0133

and existing outrigger, which would have a mono-pitched roof. The eaves height of the extended part of the extended building, which measures approximately 4.7 metres, would be below the 5 metre threshold set out in Policy LP47. I have not been presented with any compelling evidence to demonstrate that there are special circumstances to justify this requirement. Therefore, the provision of nesting box and bee brick would not be required.

9. Consequently, I find that due to the eaves height of the extended part of the building being below 5 metres in height, Policy LP47 of the HLP is not applicable in this particular case. Therefore, condition No.4 is not necessary or reasonable. It is also not relevant to the development, in so far as, the eaves height of the proposed extension falls below the height stated in Policy LP47.

Conditions No.5 and 6

10. Policy 53 of the HLP states that all development must have regard to reducing flood risk, both to, and from the site over its expected lifetime. It also states that development should decrease vulnerability to flooding and achieve greenfield run off rates by attenuating water on site, utilising SuDs and in accordance with the London Plan drainage hierarchy. The Council's Drainage Team recommended imposition of condition nos. 5 and 6 on the grounds that they were necessary to prevent increased flooding from surface water run-off.
11. It is acknowledged that the appeal site is located in an area with a high risk of surface water flooding. However, as the first-floor extension would extend and alter an existing outrigger and its roof there would be no increase in the footprint of the property as a result in this application.
12. I acknowledge that the planning history of the appeal site indicates that some further extensions and alterations which are not part of this application, and these may increase the overall footprint and size of the dwelling, including additional non-permeable areas. However, the proposed extension to which this application relates is a minor addition to the first floor of the property, above an existing ground-floor extension and does not increase the overall roof area nor areas of non-permeable surfaces.
13. As such, the development permitted would not be likely to result in increased surface water run-off or flood risk. Therefore, I find that condition Nos 5 and 6 which require drainage and flood risk measures to be agreed and implemented are not reasonable or necessary in the context of this application. These conditions are also not relevant to the development permitted.
14. My attention has been drawn to a recent grant of planning permission³ at the property for a part two, part single storey rear extension to No. 48 and 50 Olinda Road. The appellant states that two of the disputed conditions (No.4 and No.6) were not imposed on this application. The Council have stated that condition No.4 was not imposed due to the eave's height of the proposed extension and the suitability of a location for a bat/bird box. A condition requiring sustainable drainage, is included, and incorporates the same wording as the disputed condition No.5 which is the subject of this appeal. Nevertheless, the inclusion of this condition on a separate grant of planning permission does not alter my findings above.

³ Planning Application Ref: 2022/0433

15. For the above reasons, I find that condition Nos 4, 5 and 6 are not reasonable, necessary, or relevant to the development permitted.

Conditions

16. It came to light during the appeals process that an error had been made in relation to the approved plans list on the original decision notice. Therefore, for the avoidance of doubt I have substituted condition No. 1 for a condition which lists the approved plans. This condition is necessary to ensure that the development is carried out in accordance with the correct set of plans.

Conclusion

17. For the reasons given above, I conclude that the planning permission should be varied as set out in the formal decision.

K Lancaster

INSPECTOR