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## Appeal Decision

Site visit made on 22 January 2024

**by Mrs Chris Pipe BA(Hons), DipTP, MTP, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 July 2024**

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**Appeal Ref: APP/U5360/W/23/3322038**

**Star House, 3 Richmond Road, Hackney, London E8 3HY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by JJF Investments LLP against the decision of the Council of the London Borough of Hackney.
  - The application Ref is 2021/3604.
  - The development proposed is change of use of Level -2 from community use (Use Class F1(f)) to provide 5 residential studio units (Use Class C3) including alterations to the western elevation at Level -2, the installation of light wells along the western elevation and internal alterations to access stairs.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use of Level -2 from community use (Use Class F1(f)) to provide 5 residential studio units (Use Class C3) including alterations to the western elevation at Level -2, the installation of light wells along the western elevation and internal alterations to access stairs at Star House, 3 Richmond Road, Hackney, London E8 3HY in accordance with the terms of the application, Ref: 2021/3604, and the plans submitted with it, subject to conditions set out in the attached schedule.

### Procedural Matter

2. The Council changed the description of development from that stated on the application form. In the interests of clarity, I consider that the amended description accurately describes the appeal scheme and accordingly I have adopted an amended description in the heading above.

### Main Issues

3. The main issues in this appeal are the effect of the proposed development on:
  - (i) the living conditions of future occupiers of the properties in terms of light, outlook and provision of outdoor amenity space;
  - (ii) accessibility; and
  - (iii) the balance of family sized housing within the Borough.

### Reasons

*Living Conditions*

4. The site comprises a basement area which lies adjacent a railway line within a predominantly residential area. The wider area is characterised by buildings of varied design and appearance.
5. The Council confirm that robust marketing evidence was provided in the form of a report from Currell from 2017 and Strettons from 2020. The evidence demonstrated that the community facility was no longer required in its current use and that it is not suitable and viable for any other forms of social infrastructure for which there is a defined need in the locality.
6. Given the residential use on the upper floors along with the location, limited natural light and lack of disabled access the redevelopment of appeal site is constrained.
7. In terms of light and outlook, excavation is proposed to increase the floor to ceiling height across the basement as well as to the west of the building footprint to create small lightwells for the proposed units. This would allow the installation of large windows and doors for each unit. The units would be on the same level as the railway line and as such outlook would be restricted. Notwithstanding this the environment is urban and outlook would not be dissimilar to most basement residential units.
8. The appellant has provided a Daylight and Sunlight Report confirming that the proposed development would comply with the Average Daylight Factor. The proposed development comprises studio apartments which are single aspect. The level of sunlight to the units would be restricted due to the deep floor plate, nevertheless I am not persuaded that the amount of sunlight which will penetrate the units would not be sufficient after taking into account the Daylight and Sunlight Report provided.
9. Private amenity space is proposed to be provided by lightwells which front onto the railway line. Policy D6 of the London Plan (2021) states that a minimum of 5sqm of private outdoor space should be provided for 1-2 person dwellings and it must achieve a minimum depth and width of 1.5m. All lightwells would exceed the minimum 5sqm.
10. Due to the shape of the lightwells some lightwells do not meet the minimum depth requirement. The appellant contends that the provision of a double layer glazing system reduces the width of the amenity space. Notwithstanding this the amount of amenity space exceeds the requirements, there would be access to communal outdoor amenity space on the first floor, and I note that the constraints of the site i.e. provision of a fire escape route adjacent the lightwells and provision of increased noise mitigation in the form of double glazing system impact on the width of private amenity space.
11. Whilst the private outdoor space would be located adjacent to the railway line, this is not uncommon in a dense urban area. I find that the proposed private amenity space is adequate for the proposed studio units.
12. I conclude that the proposed development would not harm the living conditions of future occupiers of the properties in terms of light, outlook and provision of outdoor amenity space.
13. There is no conflict with Policy D6 of the London Plan, except in relation to the provision of private amenity space which I have found acceptable, Policies LP1 and LP17 of the Hackney Local Plan 2033, Strategic Planning (2020) (the Local

Plan) and the Mayor of London's Housing SPG which seek amongst other things to ensure developments are designed to meet the needs of future occupants.

### *Accessibility*

14. In terms of accessibility Policy D7 of the London Plan aims to provide suitable housing and genuine choice for London's diverse population. The policy seeks to secure 10% of dwellings meet Building Regulation requirement M4(3) 'wheelchair user dwellings'. All other dwellings should meet M4(2) 'accessible and adaptable dwellings', which would include step-free access. There is a caveat in Policy D7 which states that in blocks of four storeys or less it may be necessary to apply some flexibility on some development types including small scale infill developments.
15. The appeal building is five storeys, current access to the basement is via stairs, the proposal does not include the provision of a lift as such the proposed development does not comply with Policy D7 of the London Plan.
16. Notwithstanding this I note that the appellant contends that the proposed units would meet Building Regulations Part M(4)1 inclusive design standards. Whilst a step free access has not been provided the building already has stepped access to the basement which can be used for community use.
17. I am mindful that the communal outdoor area is on the first floor (4<sup>th</sup> level), and that the second floor (5<sup>th</sup> level) is only accessible to the occupants or visitors of the first-floor flats. Taking a pragmatic approach, I find that this small-scale development would not create an inaccessible residential scheme.
18. There is no conflict with Policy D5 of the London Plan, Policy LP1 of the Local Plan and the Mayors (GLA) Housing SPD, which seek amongst other thing to create inclusive developments.
19. The Council contend in reason for refusal number 3 that there is conflict with Policy LP7 of the Local Plan. Policy LP7 relates to advertisements and not housing design.

### *Family sized housing*

20. Policy H10 of the London Plan highlights that schemes should generally consist of a range of unit sizes however recognises that smaller units can assist in freeing up existing family housing.
21. The Local Plan recognises that there is a need for all types of dwelling sizes and tenures. Policy LP14 sets out that the preferred dwelling mix for at least 33%, 3 or more bed units and a higher proportion of 2-bed units than 1-bed units. The proposed development fails to comply with the housing mix identified in the policy.
22. Notwithstanding this the Local Plan states that the ability to deliver the required mix of housing may vary depending on site location and characteristics, the wording of Policy LP14 recognises this 'Developments should provide the following mix of dwelling sizes...' [*emphasis added*].
23. I understand that the existing property comprises a building of 15 residential units, the Council confirm that in regard to the existing building the current dwelling mix is policy compliant. Whilst the appeal site comprises 5 studio

units and would be developed at a different time to the upper floors it would not be a standalone development.

24. Policy LP14 does not reference studio units in the preferred housing mix, however due to the constraints of the site and mix of units in the building I find that the proposed development would not harm the balance of family sized housing within the Borough.
25. There is no conflict with Policies H10 of the London Plan and LP14 of the Local Plan which amongst other things seeks to ensure a balanced housing supply.

### **Other Matters**

26. The appellant has provided a legal agreement securing developer obligations including contributions towards affordable housing and carbon offsetting contribution, the provision of car free housing etc. The Council have confirmed that the agreement is suitable for the proposed development. I do not disagree.

### **Conclusion and Conditions**

27. For the above reasons I conclude that this appeal should be allowed.
28. I have imposed a standard condition relating to the commencement of development and a condition specifying the relevant plans as this provides certainty. In order to safeguard the character and appearance of the area I have imposed a condition concerning materials.
29. I have imposed conditions relating to flood risk, sound insulation and cycle parking, in the interest of the living conditions of future occupiers. A condition has been attached relating to the provision of swift boxes to safeguard biodiversity at the site.
30. Due to the proximity of the site to the railway line, I have imposed a condition relating to design, method statements & risk assessments for each stage of the development covering demolition, substructure and superstructure and all temporary works to ensure that the development does not impact on existing or proposed Rail for London transport infrastructure & operations.

*C Pipe*

INSPECTOR

## Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - 00-100, Site Location Plan
  - 00-115 Site Plan Proposed
  - 20-210 Proposed Basement -2 Plan
  - 20-211 Proposed Ground Floor and Basement -1 Plan
  - 20-250 Proposed Sections
  - 20-270 Proposed Elevations
  - 20-301 Proposed 3D View
  - 20-302 Proposed Studio Flat 19 Section View
  - 20-303 Proposed Studio Flat 16 Section View
- 3) A Flood Risk Assessment/statement should be carried out to assess the potential flood risk to ensure that there is no increased risk to the future occupants. The assessment/statement shall be submitted to and agreed in writing with the Local Planning Authority and implemented accordingly. The assessment/statement should consider and identify the potential flood risks at this site (existing and post-development) and provide appropriate flood mitigation measures where necessary to ensure that the future occupants/users of the site will be protected from the identified flood risks.
- 4) The hereby approved dwellings shall be designed in accordance with BS 8233:2014 "Guidance on sound insulation and noise reduction for buildings" to attain the following internal noise levels: A) Internal noise condition:

| Activity                       | Location          | 07.00 to 23.00 | 23.00 to 07.00 |
|--------------------------------|-------------------|----------------|----------------|
| Resting                        | Living room       | 35 dB LAeq     | None           |
| Dining                         | Dining room/ area | 40 dB LAeq     | None           |
| Sleeping (daytime/<br>resting) | Bedroom           | 35 dB LAeq     | 30 dB LAeq     |

- 5) Details of all materials to be used on the external surfaces of the building, including, but not limited to: window details; boundary treatment; brick details, shall be submitted to and approved by the Local Planning Authority, in writing. Development shall be carried out in accordance with the approved details.

- 6) Prior to occupation of any of the hereby approved residential units, a cycle parking plan shall be submitted to and approved in writing by the Local Planning Authority which shows details of layout, stand type and spacing of 14 x cycle parking spaces within the development site. The cycle parking shall be implemented in full prior to occupation of any unit and retained in good working condition, in accordance with the above details, in perpetuity.
- 7) The development hereby approved shall provide two swift boxes close to the eaves prior to first occupation and shall be retained as such in perpetuity.
- 8) The development hereby permitted shall not be commenced until detailed design, method statements & risk assessments for each stage of the development covering demolition, substructure and superstructure and all temporary works have been submitted to and approved in writing by the local planning authority (in consultation with Rail for London (RfL)) which:
  - provide details on all structures
  - provide details on the use of plant
  - accommodate the location of the existing Rail for London (RfL)) Assets / Infrastructure
  - accommodate RfL Operational and Maintenance requirements
  - accommodate ground movement arising from the construction thereof
  - mitigate the effects of noise, vibration & distractions arising from the adjoining operations to the RfL
  - Infrastructure & Operations

In addition,

- RfL requires that the applicant enters into an Asset protection Agreement with RfL to ensure that the development is carried out safely and in accordance with RfL's requirements.
- RfL may need to request that the applicant conducts a light & glare assessment to determine the impact on the RfL signalling apparatus and / or train drivers' vision on approaching trains. RfL reserves the right to request the screening of any light & glare, including vehicular lights, which may interfere with the sighting of signalling apparatus and / or train drivers' vision on approaching trains.
- No maintenance regime for the proposed development elevations facing the railway should be permitted which compromises the safe, efficient and economic operation of the railway.
- Any additional fencing required on the railway boundary, for example for screening purposes, must be independent of RfL's fencing and allow room for maintenance of both fences.

The development shall thereafter be carried out in all respects in accordance with the approved design and method statements, and all structures and works comprised within the development hereby permitted which are required by the approved design statements in order to procure the matters

mentioned in paragraphs of this condition shall be completed, in their entirety, before any part of the building hereby permitted is occupied.