



Appeal Decision

Site visit made on 16 April 2024

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2024

Appeal Ref: APP/U5360/W/23/3326896

Land at Ridley Road and Colvestone Crescent, Hackney, London E8 2LG

- 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 Ms Ann Tang of Nice Properties & Management Limited against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2022/2952.
 - The development proposed is erection of a three-storey building comprising commercial (financial and professional services) floorspace at ground floor and a residential unit first and second floor levels (C3 use) including second floor terrace and storage for bikes and refuse.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Ms Ann Tang of Nice Properties & Management Limited against the Council of the London Borough of Hackney. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of the development provided on the planning application form has been replaced by an amended version on the decision notice and in subsequent appeal documents. I consider that subsequent description to accurately represent the proposal and I have therefore used it within this decision.
4. The appeal site is adjacent to an outdoor play/learning space associated with Colvestone Primary School. During the course of my consideration of this appeal, my attention was drawn to the designation of this outdoor space as an Asset of Community Value (ACV) as well as the proposed closure of the School. I requested further details on these issues and both main parties were given the opportunity to comment. I have had regard to the comments received. It was requested that I view the appeal site from the School, and I was able to do so at my visit.
5. Subsequent to the submission of the appeal, a signed and completed Unilateral Undertaking (UU) has been submitted in respect of matters including an affordable housing contribution, carbon off-set contribution, compliance with the Considerate Constructors Scheme, monitoring fee and residents parking permits. In respect of those matters, the UU meets the tests set out in paragraph 57 of the National Planning Policy Framework.

6. A copy of the UU has been provided to the Council, and it has responded that it has no objections to the wording of the UU, albeit that its comments are based on a draft document. The draft UU provided to me reflects the completed UU that was sent to the Council. I have proceeded to determine this appeal giving due consideration to the UU.

Main Issues

7. The main issues are:

- The effect of the proposal on the site of Colvestone Primary School with regards to outlook and light; and
- Whether suitable access during the construction period could be provided.

Reasons

Outlook and Light

8. The appeal site is adjacent to an area of outdoor play/learning space of a limited size, which at the time of my visit was used in association with the site of the Colvestone Primary School. The proposed 3-storey building will be located directly adjacent to this outdoor space, and due to its scale and proximity it would be a stark and overdominant feature in views from the outdoor space. That would be the case even allowing for the materials and detailing of the proposed elevations. The harm would be exacerbated due to the limited area of the outdoor space, which would be affected by the enclosing effect of the existing school building as well as the presence of the appeal proposal.
9. The proposed building would also be prominent in views from a glazed door and surrounding windows which lead onto the outdoor space. This door and windows serve a large room which was used as a learning space at the time of my visit, and although there are other larger windows that serve the room these are primarily set at a high level and do not negate the benefits of the affected door and windows which provide a valuable outlook onto the outdoor space. As well as being an obtrusive feature in views from within the room, the proposal would be an unneighbourly feature for users passing from the school building to the outdoor space.
10. A Previous Appeal Decision¹ which dismissed a proposal for a 3-storey building on the appeal site does not address the issue of the outlook from the outdoor space. However, although the Previous Appeal Decision is silent on this issue, this does not mean that this issue should be set aside based on the evidence before me and my own observations.
11. Due to the arrangement and location of the appeal site in relation to the school, there is potential for the proposal to result in a loss of daylight and sunlight to the outdoor space. This is the case even allowing for the high boundary wall and the school building which surround the space.
12. The appellant has prepared a detailed Overshadowing Report which concludes that the outdoor space will continue to receive high levels of sunlight and that the effects of the proposed development will be small. This is consistent with

¹ Appeal Ref: APP/U5360/W/21/3274827

the BRE² Guidance quantitative acceptability criteria which says that the space will receive sufficient sunlight throughout the year since more than half the area of the space will receive more than 2 hours of sunlight on 21st March.

13. Addenda have also been submitted to the Overshadowing Report in response to the Officer's Report and comments received, and which include further evidence on climate based daylight modelling.
14. However, despite the detailed nature of the appellant's evidence, I am mindful that the numerical guidelines of the BRE Guidance should be interpreted flexibly, including where natural light is of special importance. Given the use of the outdoor play/learning space and the limitations of its size and arrangement, I consider that more generous amounts of sunlight and daylight are appropriate. Even allowing for the effect of cloud cover and the use of the open area at different times of year, viewed objectively and in context I consider that there would be a noticeable and material loss of daylight and sunlight to users of the outdoor space arising from the appeal proposal. This adds to my concerns in respect of the oppressive effect of the proposal on the outlook from the school site, and cumulatively this would result in a gloomy and unattractive environment for users of the outdoor space.
15. It has been brought to my attention that the Primary School is scheduled for closure. However, there is no certainty that a use for the site of the Primary School which relies on the outdoor space in a similar manner to that existing will not continue. The school is a Grade II Listed Building and the outdoor space is registered as an ACV. Both of these factors indicate that there is a significant possibility that the building and outdoor space will be retained in their current form. Having regard to those considerations, the closure of the Primary School does not mean that this main issue and the effect on the outdoor space falls away.
16. I therefore conclude that the proposal would lead to significant harm to users of the site of Colvestone Primary School with regards to loss of outlook and light. The proposal would therefore be contrary to Policies LP1 and LP2 of the Hackney Local Plan 2020 (the Local Plan) which require that development must promote good health by creating spaces which are inclusive and attractive, and ensure that there are no significant adverse impacts on the amenity of neighbours.
17. I find no direct conflict with policies D4, D5 and S3 of the London Plan 2021 nor Policy LP8 of the Local Plan which relate to matters including good and inclusive design, the supply and development of education and childcare facilities as well as social and community infrastructure.

Construction Access

18. The appeal site is located in close proximity to the Ridley Road Market. As I observed on my visit, the proximity of the market as well as associated service parking and pedestrian movements could potentially conflict with access for construction vehicles to the site.
19. However, in their consideration of the Previous Appeal, the Inspector concluded that it would be possible to achieve access to the site along Birkbeck Road or Colvestone Crescent. The Inspector referred to the need for dialogue to take

² Site layout planning for daylight and sunlight: A guide to good practice. Paul J Littlefair et al. Third edition 2022

place in respect of the market, and concluded that there is nothing in the evidence to suggest that a suitable construction management plan could not be conditioned.

20. The Council has subsequently referred to the closure of Colvestone Crescent near its junction with Ridley Road, and contends that it would not be available for construction traffic contrary to the views of the previous Inspector.
21. However, although I observed that a locked gate was in place across Colvestone Crescent near the appeal site, this would still enable access by construction vehicles, albeit with a need to arrange access through the gate. Vehicular access was also available along Birkbeck Road. There is space near the site to enable the storage of materials, and although this may affect features such as parking this would only be for a temporary period.
22. I am mindful of the proximity of the appeal site to the Market and the associated high level of pedestrian flow. Furthermore, Ridley Road is not available for vehicular traffic and there is a barrier across Colvestone Crescent in the vicinity of the site. However, it has not been demonstrated that access during construction would be so difficult or uncertain that this could not be addressed by an appropriate condition.
23. Based on what I have seen and read, I conclude that suitable access to the appeal site during the construction period could be ensured through the imposition of an appropriate condition, such as one requiring the submission of a construction management and logistics plan. The proposal would therefore not be contrary to Policies SD6, D13, E9 and T4 of the London Plan and Policies PP2, LP32, LP33, LP40 and LP43 of the Local Plan which together refer to town centres, street markets and mitigating transport impacts.

Other Matters

24. The appeal site is located within the St Mark's Conservation Area (CA). It is also within the setting of the Grade II Listed Colvestone Primary School and associated Forecourt Railings. The Inspector in the Previous Appeal conclude that a larger scheme on the site would preserve the character and appearance of the CA, and would have a neutral impact on the Listed Buildings. In respect of the appeal proposal, the Council has concluded that the proposal will not detract from the setting of the Listed Buildings and would preserve their significance; and has also not objected to the effect on the CA subject to the use of appropriate materials and detailing on the flank wall. Based on the evidence before me, I see no reason to disagree.
25. I have had regard to the benefits of the proposal. The appeal site is currently an unsightly feature in one of the focal points for the area, and the proposal would bring this plot of previously developed land into a productive use. It would add to the amount of commercial space in the area and create a dwelling which would contribute to the supply and mix of housing in a location with excellent access to services, although given the scale of the proposal these contributions would be very limited. However, it may be that the site could be developed in a manner that would not have the same degree of impact on the site of the school, albeit with a reduced amount of space or form of accommodation. The benefits arising from the proposal before me therefore carry no more than limited weight in favour of the appeal.

Conclusion

26. Notwithstanding my conclusions in respect of construction access, I conclude that the appeal proposal would lead to significant harm to the use of the site of Colvestone Primary School with regards to outlook and light. The proposal would therefore be contrary to the development plan when read as a whole in respect of creating inclusive and attractive spaces and ensuring that there are no significant adverse impacts on the amenity of neighbours.
27. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

David Cross

INSPECTOR