



Appeal Decision

Site visit made on 2 October 2024

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

an Inspector appointed by the Secretary of State

Decision date: 25 OCTOBER 2024

Appeal Ref: APP/G5750/W/24/3346793

Former Little Rainbow Nursery, 64 Essex Road, Manor Park, London E12 6RE

- 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 A&K Enterprise (UK) Ltd. against the decision of the Council of the London Borough of Newham.
 - The application Ref is 23/02224/FUL.
 - The development proposed is change of use of day nursery (Use Class D1) to large 6 bedroom HMO use class Sui Generis and the excavation of a lightwell and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of the development provided on the planning application form has been replaced by an amended version on the decision notice and in subsequent appeal documents.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.

Main Issues

3. The main issues in this appeal are:
 - Whether sufficient evidence has been submitted;
 - The provision of a community facility;
 - The living conditions of future residents in respect of living space, privacy, noise and accessibility;
 - The character and appearance of the host property and the area; and
 - Cycle storage.

Reasons

Evidence

4. The Council considers that the submitted details fail to accurately depict the extent of the existing and proposed development. Reference is made to discrepancies in the plans whereby the existing boundary treatment is omitted from the existing and proposed elevation drawings.

5. However, the omission of the boundary treatment on the elevations enables the effect of the proposal on the extant building to be properly assessed. The retention of boundary treatment is also indicated on the proposed plans as well as the street elevation onto Ruskin Avenue and the south elevation. This indicates that the boundary treatment would be retained. The Council also undertook a site visit which would have enabled the boundary treatment to be assessed. Even if there had been concerns about the retention or replacement of the boundary treatment, this could have been addressed by a condition on any permission.
6. Based on what I have seen and read, I conclude that the evidence before me is sufficient to enable the assessment of the appeal proposal. The proposal would therefore not be contrary to the National Planning Policy Framework (the Framework) in respect of the decision-making process. The submitted evidence also enables the proposal to be assessed against the policies of the London Plan 2021 and the Newham Local Plan 2018.

Community Facility

7. Policy S3 of the London Plan sets out that proposals should ensure that there is no net loss of childcare facilities, unless it can be demonstrated that there is no ongoing or future need. Policy INF8 of the Local Plan also specifies that where the release of a community facility to other uses is proposed then evidence must be provided in respect of a number of factors, including marketing for a period of 6 months at a market rent or sale price benchmarked against at least 3 other equivalent properties in the area.
8. The appellant emphasises that the nursery is vacant and was marketed for a period of 12 months with no interest from other nursery providers and has provided details of the marketing of the commercial leasehold.
9. However, the Council has questioned the effectiveness of the marketing, including the extent of active marketing that has been undertaken. Reference has also been made to problems accessing some of the advertisement details, and whether other service providers have been contacted in relation to their potential interest in the site. More fundamentally, it has not been demonstrated that the market value of the facility was arrived at on the basis of a benchmarking exercise or whether potential price reductions could have generated more interest.
10. The appellant refers to a number of other facilities in the area which provide similar or better services, and a number of vacant places at these other sites although much of this evidence is framed in general terms. They also refer to the Council's Childcare Sufficiency Assessment 2022 which shows that pre-school places have increased by 8.5% since 2020 in the Council's area and identifies a high number of childcare places in this Ward. However, these factors, including an increase in supply, does not mean that the need for this form of community facility is now being met.
11. Based on the evidence before me, the marketing exercise undertaken by the appellant is not suitably robust, and it has not been demonstrated that there is no longer a need for this community facility in this area. The proposal would therefore be contrary to Policy S3 of the London Plan; Policies S1 and INF8 of the Local Plan; and the Framework in respect of the provision and protection of community and childcare facilities.

Living Conditions

12. The Design and Access Statement specifies that the proposed HMO will contain 5 double bedrooms and a single bedroom. Although the floor plans indicate that all of the rooms would contain a double bed, it is reasonable to assume that the smallest bedroom (No 5) would be for single occupancy. The number of occupants for each room can be controlled by the licensing regime.
13. Policy H3 of the Local Plan includes provisions relating to HMOs, and Policy H3bii requires that proposals should achieve applicable quality standards including "Newham and Pan-London Private Sector Rental Licensing benchmark criteria".
14. The Council refers to the East London HMO Guidance which includes minimum floor areas for rooms depending on occupancy. Bedrooms 2 and 3 of the proposal would not comply with the minimum floor area specified in this Guidance. However, this document accepts that it is guidance and is intended to be flexible, subject to alternatives approved by the local authority.
15. The Council also refers to its Licensing Guide¹, which I consider is the more appropriate standard as it specifically relates to the Council's area, and mindful of the flexibility referred to in the HMO Guidance. Based on the evidence before me, Bedroom 5 would comply with the floor area for single occupation specified in the Licensing Guide, and all of the remaining bedrooms would exceed the minimum floor area for occupation by 2 persons.
16. The Council also considers that Bedroom 3 lacks privacy due to its position next to the front door and adjacent to the hallway, however this does not reflect the details on the submitted plans. That said, Bedroom 2 would be next to the entrance and Bedroom 3 next to the kitchen, and both rooms would be adjacent to an access corridor. However, given the nature of occupation of HMOs it is inevitable that residents would be aware of activity in the building. It has not been demonstrated that this would be of a degree that would lead to unacceptable harm to residents in respect of noise or privacy, or that it cannot be addressed by measures such as noise insulation.
17. The Council refers to a lack of turning circle space for wheelchairs and that the proposed bathrooms are too small for wheelchair users. However, although the provision of accessible, adaptable and wheelchair user accommodation would be a benefit, the Council has not demonstrated a particular need or policy requirement for this form of dwelling in respect of the appeal proposal. The provision of a ramp to the entrance of the building does not mean that it will provide for wheelchair users.
18. Drawing the above together, based on the evidence before me the proposal would provide suitable living conditions for future residents in respect of living space, privacy, noise and accessibility. The proposal would therefore not conflict with the amenity and housing quality requirements of Policies D4 and D6 of the London Plan; Policies H1, SP2, SP3, SP8 and H3 of the Local Plan; and the Framework.
19. The proposal would also not conflict with the guidance of the Council's Licensing Guide, and consequently would not conflict with the East London

¹ Private Rented Property Licensing Guide for Landlords and Managing Agents – Newham London

HMO Guidance which is to be read flexibly with due regard to approved local alternatives.

Character and Appearance

20. The proposal would include a lightwell on the elevation of the property facing on to Ruskin Avenue. The Council considers that this lightwell would be excessive in scale as it would extend to the boundary of the site.
21. However, although nearby residential terraces, including the host terrace of the appeal building, are of a relatively consistent design and do not include lightwells of the scale proposed, the appeal site as a community use is of an appreciably different character and appearance to these terraces. This is particularly the case for the elevation facing onto Ruskin Avenue, which includes an element of the building at the ground floor and high means of enclosure which project to the edge of the pavement beyond the building line. The school opposite the site across Ruskin Avenue also establishes a different site context compared to the residential terraces.
22. The proposed boundary treatment would also provide a degree of screening of the lightwell, with the result that its degree of projection would not be readily apparent.
23. Lightwells are not a common feature in this area, particularly of the scale and arrangement as that proposed. But, due to the particular circumstances of the appeal site, I consider that the lightwell would not harm the character and appearance of the host property or the wider area. The proposal would therefore not be contrary to the design requirements of Policies D1, D3, D4 and D8 of the London Plan; Policies S1, SP1, SP3 and SP8 of the London Plan; and the Framework.

Cycle Storage

24. Cycle storage is proposed in the rear garden of the proposal. However, the Council specifies that the proposed storage would not be able to accommodate the level of cycle parking required for the proposal. The Council also considers that further evidence could not be required on this matter as this would materially alter the proposal.
25. However, given the secluded location of the cycle parking in the rear garden and the relationship with the host and neighbouring properties, I do not consider that the provision of increased cycle storage would be such that it would lead to a material effect on matters such as character and appearance or living conditions. I therefore consider that this matter could be addressed by a suitable planning condition.
26. Subject to a condition in relation to the provision of cycle storage, the proposal would not conflict with the sustainable transport, cycling promotion and design requirements of Policies D3, D4 and T5 of the London Plan; Policies S1, S6, SP2, SP8 and INF2; and the Framework.

Other Matters

27. The proposal would bring a vacant building into a productive use, and would add to the supply and mix of housing in an area with good access to services. However, it has not been demonstrated that there is an overriding need for the

form of housing proposed, and in any event the proposal would be of limited benefit given the scale of the development.

28. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. A direction of travel has been outlined within the Written Ministerial Statement (WMS) 'Building the homes we need', which is a material consideration. However, based on the evidence before me in respect of community facilities, the adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in both the extant and draft revised Framework. The WMS and the proposed revisions to the Framework do not therefore negate my conclusions on this appeal.

Conclusion

29. Notwithstanding my conclusions in respect of evidence, the living conditions of future residents, character and appearance, and cycle storage; I conclude that the marketing exercise undertaken by the appellant is not suitably robust, and that it has not been demonstrated that there is no longer a need for this community facility in this area. The proposal would therefore be contrary to the development plan and the Framework when read as a whole with regard to the provision and protection of community and childcare facilities.
30. There are no material considerations that indicate the appeal 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