



Appeal Decision

Hearing held on 17 September 2024

Site visit made on 18 September 2024

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/U5360/W/24/3344988

65 Nile Street, Hackney, London N1 7RD

- 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 Mr Mike Penn of Little Venice Developments Limited against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2023/1156.
 - The development proposed is the erection of a roof extension to create one additional storey, plus erection of a single storey rear extension and conversion of the property to create 4 self-contained dwellings comprising 2 x 1 bed, 1 x 2 bed and 1 x 3 bed units, including minor external alterations.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a roof extension to create one additional storey, plus erection of a single storey rear extension and conversion of the property to create 4 self-contained dwellings comprising 2 x 1 bed, 1 x 2 bed and 1 x 3 bed units, including minor external alterations at 65 Nile Street, Hackney, London, N1 7RD in accordance with the terms of the application, Ref 2023/1156, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Mike Penn of Little Venice Developments Limited against the Council of the London Borough of Hackney. This application is the subject of a separate Decision.

Preliminary Matters

3. Following the Hearing, a completed planning obligation was provided which included a contribution towards affordable housing, to carbon offsetting measures, car free development and a Considerate Constructors Programme.

Main Issues

4. The main issues of the appeal are:
 - The effect of the proposed development on the supply of employment sites,
 - Whether the proposed development would provide appropriate living conditions for future occupiers of Unit RO2 with particular regard to outlook and daylight.

- The effect of the proposed development on the living conditions of the occupiers of 67 Nile Street with regard to outlook and privacy, and 69 Nile Street with regard to outlook,
- Whether the proposed development would encourage future occupiers to use a range of transport modes, with regard to the provision of cycle storage facilities and car free development,
- Whether the proposed development would make appropriate provision for affordable housing, and
- Whether the proposed development would make appropriate provision for carbon offsetting; and
- If there is any harm and development plan conflict, whether other material considerations indicate that a decision should be made other than in accordance with the development plan.

Reasons

Employment Sites

5. The main parties agreed at the Hearing that the last and lawful use of the ground and basement levels of the appeal site was for commercial use. While reference was made to storage in the viability reports, the main parties confirmed that for the purpose of this appeal the workshop use at the lower floors, formerly B1c, should be considered as falling into Class E of The Town and Country Planning (Use Classes) Order 1987 (as amended). On the evidence before me, I have reached the same finding.
6. Given this, the Council clarified at the Hearing that despite inclusion on the decision notice, that there was no conflict with Policy LP27 of the Local Plan¹ or Policies E1 or E2 of the London Plan. They had previously confirmed that LP26 was referenced in error on the decision notice and that it should have been Policy LP28 of the Local Plan.
7. Outside of designated areas, such as the appeal site, Policy LP28 seeks to prevent the loss of land and floorspace unless robust marketing evidence is submitted to demonstrate that there has been no demand for the existing or vacant floorspace. This is for its current or former use and for similar or alternative or more flexible units and that other alternative employment generating uses have been fully explored. Criteria setting out the requirements of the marketing evidence is given in Appendix 1 of the Local Plan. The supporting text of Appendix 1 states that it must also be shown that the site/land has been adequately marketed for a minimum of 2 years and should include evidence of a number of criteria subject to specific circumstances. No definition of 'specific circumstances' is provided.
8. The policy refers to B1c uses which does not reflect the current use class order and permitted development rights would allow such former uses to be lost without planning permission. However, the principle of retaining and protecting such uses without appropriate justification remains relevant.
9. The proposal would lead to the loss of the existing commercial floorspace of the kind set out in the supporting text of Policy LP28. The appellant did not dispute

¹ Hackney Local Plan 2033

that the evidence provided does not satisfy all of the criteria set out in Appendix 1.

10. The National Planning Policy Framework (Framework) identifies the need to reflect changes in demand for land. It also states that local planning authorities should take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs including using employment land for homes in areas of high housing demand. In addition, it sets out that significant weight should be placed on the need to support economic growth and productivity and seeks to help build a strong, responsive and competitive economy.
11. The appellant indicated that the appeal site had been marketed on and off for a number of years, far greater than set out in the marketing evidence. While the evidence provided does not cover all of this time, and was partly during Covid-19 restrictions, the duration of the formal marketing was appropriate in the circumstances.
12. A letter from the estate agent indicates a lack of demand and traffic restrictions may have affected passing trade and delivery options. In addition, as the site has been vacant for some time, the provision of recent rental levels would not be possible. Nonetheless, although the appellant indicated that they had sought views and valuations from other estate agents, I do not have any written evidence of this. Moreover, the particulars of the marketing are not before me, including what was advertised on websites or clear evidence of the exact nature of the marketing or the costing of any upgrading of the premises that could be needed to make it more suitable and marketable. Additional marketing may incur greater cost, however, again I do not have details of this.
13. Given the relatively straight forward nature of the evidence missing, the specific circumstances of this scheme do not justify the lack of evidence or that it should be an occasion where failure to comply with the relevant criteria is acceptable. The site has not been adequately marketed. The evidence is not sufficiently robust to justify the loss of the employment site.
14. Therefore, the proposal would unacceptably reduce the supply of employment sites. It would be contrary to Policy LP28 of the Local Plan. Insofar as it relates to this appeal, the policy is broadly consistent with the Framework as set out above.

Living conditions – future occupiers

15. The Residential Extensions and Alterations SPD (REA) states that it is applicable to buildings that are residential in nature. While the lower floors of the building were last used for commercial purposes and it currently has a shop front, the upper floor is residential in use and appearance. Therefore, in this instance the REA would apply.
16. At the Hearing the Council confirmed they no longer wished to pursue the refusal reason relating to unit RO1. They also confirmed that they had no concerns regarding the privacy of the occupiers of RO2 whether or not the ground floor shop window was obscure glazed. In terms of light, it was clarified that the issue related to daylight rather than sunlight. Finally, the Council

confirmed that they no longer alleged any conflict with Policy LP1 of the Local Plan for this issue.

17. The findings of the Daylight and Sunlight Report are not disputed by the main parties. This includes that the basement room would fail to achieve sufficient daylight levels (18%). This is well below the standard set in the BRE² where it states lux levels should be exceeded over at least 50% of the assessment points in the room for at least half of the daylight hours. It would also not achieve the 30 degree centre line of the REA.
18. The room is a relatively large but narrow one in the basement of an existing building and the bedroom at ground floor level would achieve the guideline levels for light. The BRE and the supporting text of Policy LP2, which although not included in the refusal reason was discussed at the Hearing, allows for flexibility in the guidance based on the site context including dense inner urban locations and the 30-degree figure in the REA is said to be a guide.
19. Notwithstanding this, the basement room would comprise much of the main living space having the living, kitchen and dining areas. Future occupiers would likely spend a great deal of time in the room as a result. While the section nearest the front of the building would achieve the required levels, the shortfall is significant and large parts of the room would be dark and gloomy. The proposal would be unacceptable in this regard.
20. There would be no windows directly serving the basement room. An internal gap would allow views up and out of the shop window. Nonetheless, the limited size of this space means that an outlook including any outside views would only be possible from the parts of the room nearest the front. Moreover, any outlook would largely be glimpses and be compromised due to the considerable upward angle. There would be a bland and uninviting outlook from the basement room as a result.
21. Consequently, the proposal would not provide appropriate living conditions for future occupiers with regard to outlook and daylight. It would be contrary to Policies LP2 and LP17 of the Local Plan and London Plan Policy D6. These, in part, require regard to be had to amenity considerations, quality. It would also fail to accord with the amenity aims of the REA.

Living Conditions – Neighbouring properties

22. At the Hearing the Council confirmed that they no longer wished to pursue the matter of outlook from 69 Nile Street (No 69). Due to third party comments about outlook, I have considered the matter.
23. While the building at 71 Nile Street (No 71) is clearly seen from the windows and outdoor space of No 69 to one side, the proposed extensions would be set away from No 69 with 67 Nile Street (No 67) in between. Therefore, given the space and angle of views towards the appeal site, the existing outlook from No 69, which is also not directly towards the appeal site, would not be harmed.
24. Photographs provided by the appellant indicate that the nearest rooms at No 67 to the proposed extension are a kitchen and bathroom. Nevertheless, it is unclear if this remains the case and I have proceeded on a precautionary basis of the rooms potentially having other uses.

² Site layout planning for daylight and sunlight - A guide to good practice

25. The proposed extensions, including the full-length extension to the rear of the appeal building would be clearly seen from the windows and outdoor area at No 67. Moreover, the extension extends across much of the rear elevation of the appeal site, close to the adjacent windows. Notwithstanding this, these windows are not directly facing the appeal site. Furthermore, there would be a more open outlook to the other side of these windows. Consequently, there would still be an acceptable outlook for occupiers of No 67 from these rooms and the outdoor area.
26. The appellant confirmed at the Hearing that screens were proposed on the side of the upper floor outdoor spaces facing No 67. Subsequently, the Council confirmed this addressed their concerns with privacy. Such a screen would prevent direct views, and therefore overlooking, from the proposed outdoor areas towards the windows and courtyard of No 67. The final details of these can be secured by planning condition.
27. Therefore, the proposed development would not harm the living conditions of the occupiers of No 67 with regard to outlook and privacy, and No 69 with regard to outlook. It would accord with Policy LP2 of the Local Plan and D6 of the London Plan where they in part require regard to be had to amenity impacts and design should be appropriate to its context.

Transport Modes

28. After the submission of the appeal and prior to the Hearing, further plans showing different cycle storage layouts were provided. The latest of these was that considered by the parties and me at the Hearing showing 2 spaces would be using a Sheffield stand.
29. The proposal would provide a number of spaces in line with the requirements of Appendix 2 of the Local Plan associated with Policy LP42. The policies and guidance put before me encourage the provision of accessible stands. However, although the Council indicated 50% of cycle spaces should be accessible, they were not able to direct me to where this was stated in any policies or guidance documents.
30. The scheme now proposes semi-vertical stands. It has not been clearly demonstrated that the proposed layout would achieve a 2.5m aisle width. Nonetheless, the scheme would provide a policy compliant number of spaces in a secure internal ground floor cycle storage area. Therefore, in this instance, the provision of 2 accessible spaces and use of tiered stands would be appropriate.
31. The final details of the stands would be secured by condition. It was indicated at the Hearing by the appellant that additional accessible stands may be possible. As stated above, the proposed layout is acceptable in this case, however, if further accessible stands could be accommodated, this could be looked at when providing the final details.
32. There are traffic and parking restrictions near the appeal site which is in a PTAL6a area. At the time of my site visit, which is only a snapshot in time, parking space in the area was limited. A planning obligation has been provided to secure the scheme as 'car free' preventing occupiers from obtaining parking permits. This is in line with Policy LP45 of the Local Plan and is necessary to promote use of non-car modes of transport and prevent adverse impacts on

traffic and highway safety from additional vehicles associated with the scheme. The obligation would therefore meet the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework.

33. As such, the proposed development would encourage future occupiers to use a range of transport modes, with regard to the provision of cycle storage facilities and car free development. It would accord with Policies LP42, LP43 and LP45 of the Local Plan, Policies T4, T1, T5 and T6 of the London Plan as well as the S106 Planning Contributions SPD (S106 SPD), the Hackney Transport Strategy and London Cycling Design Standards. These policies and guidance, amongst other things seek to ensure a variety of modes of transport are encouraged, sufficient and appropriate cycle parking provision is made, and that car free development should be the starting point where sites are well connected.

Affordable Housing

34. Policy LP13 of the Local Plan and H4 of the London Plan seek to maximise affordable housing contributions subject to viability. The S106 SPD expands on this setting out that for off site contributions for scheme of this number of units should be £60,000 per unit.
35. The main parties did not agree on some of the inputs used by each other in their viability assessments. Notwithstanding this, there was agreement that with the fallback scheme a contribution was only sought on a maximum of one additional unit. It was also agreed that if Energy Performance Certificates achieving a minimum of Level E could be provided for the existing uses that a full contribution was not viable and instead a lower figure of £26,697 was the maximum viable contribution. Following the Hearing, the EPCs were provided, and the obligation refers to the figure agreed. In light of the agreement, and in the absence of any clear evidence to lead me to a different conclusion, the contribution is fairly and reasonably related in scale and kind to the development and directly related to it.
36. The supporting text of Policy L13 sets out that small schemes may also be subject to affordable housing review mechanisms. There is no clear indication in the other policies and guidance documents before me that review mechanisms should not be used for schemes of this size. To ensure the maximum viable contribution is sought were the scheme to be more viable, in line with the policy aims the late-stage review and contribution is necessary for the scheme to be acceptable.
37. As such, the proposed development would make appropriate provision for affordable housing and would accord with Policies LP13 of the Local Plan, H4 of the London Plan and the S106 SPD.

Carbon offsetting

38. Policy LP55 of the Local Plan requires the re-use or extension of existing buildings to achieve the maximum feasible reductions in carbon emissions and seek to achieve a zero-carbon target across the site. Policy SI2 of the London Plan has similar aims and refers to contributions where the zero-carbon target cannot be fully achieved on site.
39. The appellant's Energy Statement sets out measures to improve energy efficiency. A condition is imposed to secure final details of the energy

measures, their implementation and retention. The Energy Statement also confirms that a carbon offset payment would be needed as zero-carbon cannot be met on site. The planning obligation includes provision for the contribution which has been calculated in accordance with the method set out in the S106 SPD. The obligation is necessary to meet the policy and energy efficiency aims and the sum, being based on the level of shortfall from on-site measures of this particular scheme is directly, fairly and reasonably related to the development.

40. Consequently, the proposed development would make appropriate provision for carbon offsetting. It would accord with Policy LP55 of the Local Plan and Policy SI2 of the London Plan where they seek to reduce energy use and emissions.

Other Material Considerations

41. Whatever Housing Delivery Test figures are used, the proposal would contribute to housing supply and mix, in a Borough where there is an absence of a 5-year supply. There would also be economic and social benefits from the development works and subsequent occupation of the development. In addition, the scheme would re-use a brownfield site.
42. The proposal would also have a positive effect on the character and appearance of the area by improving the appearance of the existing building which is in part dilapidated and currently a negative feature in the streetscene. The proposal also secures a contribution towards affordable housing and carbon offsetting and there would be benefits relating to biodiversity enhancement.
43. Given the scale of the scheme each of these benefits would be small. There is no clear evidence of anti-social behaviour at the site or that a lack of natural surveillance presents concerns at present. Therefore, this attracts limited weight.
44. The proposal would involve the loss of an employment site and conflict with Policy LP28 of the Local Plan that is broadly consistent with the Framework where it seeks to support economic growth and productivity and seeks to help build a strong, responsive and competitive economy. Furthermore, the proposal would fail to provide appropriate living conditions for future occupiers on one of the proposed units. This would be contrary to Policies LP2 and LP17 of the Local Plan and London Plan Policy D6 which are consistent with the Framework where it seeks a high standard of amenity for future users.
45. Therefore, the proposal would be contrary to the development plan as a whole.
46. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
47. A prior approval at the site to convert the basement and ground floors of the appeal building to residential use was not determined within the specified period. In addition, there was a certificate of lawful development to confirm that, following this, the residential use could be implemented. Given this and the time that the building has been vacant there is a realistic possibility that this fallback scheme could occur were the appeal to be dismissed.
48. The fallback scheme would result in the loss of the same area of employment space as the appeal scheme. The basement bedroom in the fallback scheme

would achieve the 50% level indicated in the BRE. Nevertheless, the room would be of a smaller size and the other rooms behind the bedroom would have very little daylight. The floor space within the basement with appropriate daylight levels would be very similar to that of the appeal scheme. The fallback scheme would have several smaller rooms at basement level which would limit the usability and flexibility of how the space could be used by future occupiers more than the larger open area in the appeal scheme. While the room layout would be different, the outlook from the bedroom in the fallback scheme would be largely the same as the basement level outlook in the appeal proposal.

49. As a result, the fallback would have similar limitations with regard to daylight and outlook and the same loss of employment sites. The fallback scheme would not make any affordable housing contribution, would result in one less unit to contribute to housing supply and would have a lower level of economic benefits due to there being less construction works and fewer occupiers. Moreover, it would not have the biodiversity, energy efficiency and carbon offsetting measures proposed in the appeal scheme.
50. Consequently, while the harms would be similar, the appeal scheme would have greater benefits than the fallback. I attribute significant weight to the fallback. In this instance, the proposed development would conflict with the development plan, but other material considerations indicate that a decision should be made other than in accordance with it.

Other Matters

51. There would be some noise and disturbance during the works associated with the scheme. However, these would be temporary, and the planning obligation provided includes provision relating to the Considerate Constructors Scheme. This would be necessary to prevent harm to the living conditions of nearby residents and is directly and reasonably related to the scheme in nature.
52. The planning obligation includes a payment for monitoring costs. The calculation of this sum is based on the level and type of contribution in accordance with the formula set out in the S106 SPD. The Council would be required to monitor the other obligations and the S106 SPD sets out the reasoning for the figure sought. On that basis, in this instance the obligation meets the relevant tests.

Conditions

53. In addition to the standard time limit condition, I have imposed one in relation to the approved plans in the interest of certainty.
54. Details of external materials are required to protect the character and appearance of the area. These are required prior to the commencement of the development in this instance to ensure details are appropriate and no other suitable trigger has been put forward. For the same reason and to ensure appropriate provision is made for refuse, details of waste storage facilities are conditioned.
55. To support biodiversity, conditions regarding green roofs along with nesting bird measures are necessary. In the interest of highway safety and protecting the living conditions of nearby occupiers, conditions relating to a demolition and construction management plan and details of non-road mobile machinery are imposed. As this would relate to the early part of the development, the

demolition and construction plan details are required prior to the commencement of the development. Energy efficiency measures are required to meet carbon emission standards. Agreement of the details of the proposed privacy screens and their retention is secured to prevent overlooking of adjacent properties.

56. A condition is imposed requiring the provision of further details of the cycle parking. As above, this would allow for an alternative scheme with more accessible stands or for the final details of the scheme shown on the revised plan. This is necessary to support the use of non-motorised vehicles and alternative transport options.

Conclusion

57. For the reasons given, I conclude that the appeal should succeed.

Stuart Willis

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following drawing numbers unless otherwise stated in the conditions below:
 - Site Location Plan – 1076-X-0000-GA-01
 - Existing Block Plan – 1076-X-0010-GA-01
 - Proposed Block Plan – 1076-X-0011-GA-01
 - Existing Ground Floor Plan – 1076-X-0020-GA-01
 - Existing First Floor Plan – 1076-X-0021-GA-01
 - Existing Second Floor Plan – 1076-X-0022-GA-01
 - Existing Third Floor Plan – 1076-X-0023-GA-01
 - Existing Roof Plan – 1076-X-0024-GA-01
 - Existing Basement Plan – 1076-X-0029-GA-01
 - Existing Section – 1076-X-0030-GA-01
 - Existing Elevations 01 – 1076-X-0040-GA-01
 - Existing Elevations 02 – 1076-X-0041-GA-01
 - Proposed Ground Floor – 1076-X-0200-GA-01
 - Proposed First Floor – 1076-X-0201-GA-01
 - Proposed Second Floor – 1076-X-0202-GA-01
 - Proposed Third Floor – 1076-X-0203-GA-01
 - Proposed Fourth Floor– 1076-X-0204-GA-01
 - Proposed Roof Plan – 1076-X-0205-GA-01
 - Proposed Basement Plan – 1076-X-0211-GA-01
 - Proposed Sections – 1076-X-0300-GA-01
 - Proposed Elevations 01 – 1076-X-0400-GA-01
 - Proposed Elevations 02 – 1076-X-0401-GA-01
- 3) No development shall commence until details / samples of the materials to be used for all facing and roofing materials, brick bonding and all new windows and doors for the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details / samples.
- 4) No development shall commence until a Demolition and Construction Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall detail the air quality and dust mitigation measures that are to be undertaken. The development shall be implemented in accordance with the approved details throughout the entire demolition and construction phase.

- 5) Prior to the occupation of any of the proposed units hereby permitted, cycle parking facilities shall be provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. The details shall include the layout, foundation, stand type and spacing. Thereafter, cycle parking facilities shall be retained in accordance with the approved details.
- 6) Prior to the occupation of units RO3 and RO4, privacy screens on the elevation facing 67 Nile Street for that unit shall be provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. Thereafter, the privacy screens shall be retained in accordance with the approved details.
- 7) Prior to the occupation of any of the proposed units hereby permitted, waste and recycling storage facilities for the development shall be provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. Thereafter, the waste and recycling storage facilities shall be retained in accordance with the approved details.
- 8) Prior to the occupation of any of the proposed units hereby permitted, green roofs shall be provided in accordance with details that have first been submitted to and approved in writing by the local planning authority, including a detailed maintenance plan. Thereafter, the roofs shall be retained in accordance with the approved details.
- 9) Prior to the occupation of any of the proposed units hereby permitted, Swift nesting bricks and/or boxes shall be provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. Thereafter, the bricks/boxes shall be retained in accordance with the approved details.
- 10) Prior to the occupation of any of the proposed units hereby permitted, energy efficiency measures, to achieve the carbon emission reductions set out in the NRG Consulting Energy Statement, shall be provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. Thereafter, the measures shall be retained in accordance with the approved details.
- 11) All Non-Road Mobile Machinery (NRMM) of net power of 37 kW and up to and including 560 kW used during the course of site preparation, demolition and construction phases shall comply with the emissions standards for the Central Activities Zone and Opportunity Areas of the Mayor of London's NRMM Low Emission Zone. Unless in compliance with the NRMM Low Emission Zone standards, no NRMM shall be on-site, at any time, whether in use or not, without the prior written consent of the local planning authority. The applicant shall keep an up-to-date register of all NRMM used during site preparation, demolition and construction phases on the online register at:
<https://www.london.gov.uk/programmes-and-strategies/environment-and-climate-change/pollution-and-air-quality/nrmm>.

APPEARANCES

FOR THE APPELLANTS:

Jonathan Welch	FTB Chambers
Garry Hutchinson	Smith Jenkins Planning & Heritage
Mike Penn	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Angelica Rokad	6 Pump Court
Lorraine Murphy	Council of the London Borough of Hackney
Peter Kelly	Council of the London Borough of Hackney
James Carney	Council of the London Borough of Hackney