

Appeal Decision

Site visit made on 27 August 2024

by L Clark BA(HONS) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/U5360/W/24/3343191

91 Green Lanes, Hackney, London N16 9BX

- 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 Shafait Momen Chawdhary of The Mint Indian Takeaway against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2023/2599.
 - The development proposed is installation of extraction/ducting equipment to rear elevation.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have amended the description of development in the banner, omitting the words "Full Planning Application for" as they do not relate to an act of development.
3. The application form states that the works were started on 2 October 2023 and completed on 6 October 2023, with the extraction/ducting equipment to the rear installed and in use. I have therefore dealt with the appeal on the basis of its retention.

Main Issues

4. The main issues are:
 - whether the development provides acceptable living conditions for neighbouring occupiers with particular regard to noise, vibration and odour; and
 - the effect of the development on the character and appearance of the appeal property and surrounding area including the Non-Designated Heritage Assets (NDHA) of 93 and 95 Green Lanes (Nos 93 and 95).

Reasons

Living conditions

5. The appeal premises (No 91) is a three-storey terraced property set on Green Lanes, a busy mixed-use shopping street which contains both commercial and residential units. No 91 is currently operating as a hot food takeaway - 'Favourite'

on the ground floor, with residential accommodation above. I saw that the upper floors of a number of properties on Green Lanes contained residential accommodation including the adjoining properties. The rear of No 91 appeared to be enclosed by the surrounding streets and included residential properties to the rear on Leconfield Road.

6. I acknowledge that the appellant contends that the Noise Impact Assessment dated 12 November 2022 (NIA) highlighted "a minor but potential concern", which prompted the replacement of the entire extraction fan, and that noise measurements carried out on 8 October 2022, indicate a 2dB increase in noise levels, concluding that the extraction has a low impact. However, despite a Certificate and report dated 2 October 2023 from Phoenix Cleaning, and manufacturer details of a Centrifugal in Line Acoustic Box Fan and Silencer having been submitted, the NIA has been undertaken using British Standard 4142:2014 "Methods for rating and assessing industrial and commercial sound" (British Standard) and does not use the most up-to-date version of the British Standard - it now being BS4142:2014+A1:2019. As such, I cannot be certain that NIA has been robustly undertaken or that the findings sufficiently address noise and vibration or other acoustic characteristics.
7. Notwithstanding the above, I had access to the stairwell associated with the residential accommodation of No 91 and the flat roof to the rear. At the time of my site visit (early afternoon) the extraction system was in use and noise was distinctly audible within the stairwell and outside. Uninstructed the extraction was switched off. During this time, noise levels to the rear were low, with road traffic noise just audible. Once it was switched back on, noise from the extraction was instantly audible and was the dominant and constant noise source during my site visit. Despite not having access into neighbouring properties, given the proximity of sensitive receptors, it is likely that a similar level of noise would be audible by neighbouring occupiers.
8. Even if the previous extraction system did not result in any noise, vibration or odour complaints, given the combination of the deficiencies with the NIA and my own observations, I do not have sufficient information to satisfactorily demonstrate that the living conditions of those nearest occupants are not materially affected by its use.
9. I conclude that it has not been demonstrated that adequate provision with regard to noise, vibration or odour has been achieved to ensure the living conditions of nearby residents are protected. As such, the development conflicts with Policy LP2 of the Hackney Local Plan 2033 – Strategy Planning (Local Plan) and Policy D3 of the London Plan 2021 which collectively seek to ensure that all new developments be designed to ensure that there are no significant adverse impact on the amenity of occupiers and neighbours, with particular regard to vibration, noise, fumes and odour.

Character and appearance

10. The front of No 91 bounds directly onto Green Lanes. In contrast, the rear is largely obscured from public view by the properties on Green Lanes, Leconfield Road and Pegasus Close. A three-storey outrigger projects from the rear of No 91 which adjoins a similar outrigger to No 89.

11. The extraction system which is already in place is located to the rear and is not visible from the front. The unfinished metal ductwork is situated close to the junction with the outrigger and the main rear elevation, with equipment on the flat roof. Despite the flue not being visible from the public realm, the existing trellis panel set on the parapet wall between Nos 91 and 93 screens the equipment set directly on the flat roof, with the rear outrigger of No 91 screening a large section of the flue from the south. The ducting is visible from within the gardens on Green Lanes and from the rear of properties on Leconfield Road visible above the height of the outrigger.
12. The rear façade of properties of Green Lanes contains a number of ancillary additions associated with the mix of commercial and residential uses. These include satellite dishes, waste pipes and ducting, however none are of the same size or have the same sharply contrasting appearance as the metal ductwork subject to this appeal.
13. My attention has been drawn to other examples of ducting in close proximity to the appeal site. Whilst I have not been provided with the circumstances of their presence, I saw that the flue to the adjoining property, whilst unfinished in its appearance, is significantly smaller in scale and set noticeably lower than that of the appeal before me. Moreover, the flue to the rear of No 107 whilst similar in scale, the ducting is in contrast, is a similar colour to the bricks of the building. This colouring aids the ducting blend into the backdrop within which it is located and assists in mitigating its appearance and overall presence within its immediate context. I therefore do not consider the presence of either duct work to be comparable to the appeal before me. Furthermore, no noise was audible from these during the time the extraction associated with the appeal was switched off.
14. Even if the extraction system subject to this appeal is akin to similar businesses throughout the country, within this context, the unfinished metal ductwork has an industrial and utilitarian design and appearance which conflicts with the character of the rear of the terrace.

NDHA

15. The Locally Listed buildings of Nos 93 and 95 adjoin the other side of No 91. The significance of these non-designated heritage assets is largely derived from their architectural merits depicted on the front and experienced from Green Lanes. Given my findings above I do not agree that its presence affects the significance of the NDHA but is a neutral factor in my determination of this appeal.
16. For the reasons given above, I conclude that whilst the development does not harm the character or appearance of the NDHA's, this is not the case for the appeal premises and the surrounding area. As such, the development conflicts with Policies D3 and D4 of the London Plan, and Policy LP1 of the Local Plan which collectively seek to ensure all new development is of the highest architectural and urban design quality, which amongst other matters, use attractive, durable high-quality materials which complement local character; and thoughtfully and efficiently integrate building services equipment and avoid compromising the appearance of the building.

Other Matters

17. Whilst I am sympathetic to the fact that the appellant sought to engage with the Council prior to submitting their planning application, this is not within the scope of my assessment which must focus on the planning merits of the appeal proposal. Furthermore, the absence of objections has no bearing on the planning merits of the appeal before me.

Conclusion

18. For the reasons given above, the proposal conflicts with the development plan when read as a whole. Material considerations, including the National Planning Policy Framework do not indicate that a decision should be made other than in accordance with the development plan. Having considered all other matters raised, I conclude that the appeal should be dismissed.

L Clark

INSPECTOR