



Appeal Decision

Site visit made on 5 March 2025

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

an Inspector appointed by the Secretary of State

Decision date: 24th March 2025

Appeal Ref: APP/U5360/W/24/3353887

Land At 28 Clonbrock Road, Hackney, London N16 8RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mrs Pamela Allsop against the Council of the London Borough of Hackney.
 - The application Ref is 2023/2892.
 - The development proposed is demolition of existing studio building and front boundary wall, construction of new three storey building including excavation to form new basement.
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Decision

1. The appeal is dismissed and planning permission for demolition of existing studio building and front boundary wall, construction of new three storey building including excavation to form new basement is refused.

Application for Costs

2. An application for costs was made by Mrs Pamela Allsop against the Council of the London Borough of Hackney. This application is the subject of a separate Decision.

Preliminary Matters

3. The Government has published its Housing Delivery Test results alongside the publication of a revised National Planning Policy Framework (The Framework) in December 2024. The appellant has responded on the revised Framework in their final comments, and I have had regard to the comments made in reaching my decision.
4. The appellant has submitted a Unilateral Undertaking (UU) which includes payments in respect of affordable housing, carbon off-set, and monitoring as well as measures relating to car-free development and the Considerate Constructors Scheme. The Council has raised some concerns about the wording of the UU. However, given my conclusions in my reasoning below I have not requested that the appellant redraft the UU, even if it was necessary. Nevertheless, I have determined this appeal giving due regard to the contributions and measures set out in the UU.
5. The appellant has submitted amended plans which include a reduction in the site boundary and the introduction of hit-and-miss brickwork across an obscured window on a side elevation. I consider that these are minor amendments and that no party would be prejudiced if I proceed to determine this appeal on the basis of the amended plans.

6. The Council has also requested changes to the design of the proposal which it has asked that I impose as a pre-commencement condition. However, even if I had the power to do so, I consider that the amendments go beyond what could be considered to be minor amendments and should be subject to further consultation. I have therefore proceeded to consider the appeal on the basis of the amended plans provided by the appellant.

Background and Main Issues

7. The appeal has been submitted due to the failure of the Council to give notice within the prescribed period of a decision on a planning application. The Council has also failed to submit its Statement of Case within the appeal timetable. The Council has therefore not indicated its reasons for refusal had it been minded to do so. I also note the comments from the Council's case officer provided with the appellant's claim for costs which state that following appropriate amendments they would be able to recommend approval.
8. Based on the evidence before me, including comments from third parties, I consider that the main issues in this appeal are the effect of the proposal on the:
- Living conditions of nearby residents in respect of outlook and light; and
 - Character and appearance of the area.

Reasons

Living Conditions

9. The appeal site is part of what was previously the garden area of the dwelling at 28 Clonbrock Road, although the evidence indicates that the dwelling at No 28 and the appeal site are in separate ownership.
10. The proposed dwelling would be located in very close proximity to the rear external amenity area of No 28, which also has a number of openings including windows and glazed doors looking onto it. Due to the proximity and arrangement of the appeal proposal to No 28, this would lead to a substantial loss of sunlight and daylight reaching its external amenity area as well as the openings which look onto it. Similarly, because of the proximity and scale of the proposal, it would have an oppressive and overbearing relationship in the outlook from the amenity area and openings to the rear of No 28.
11. The appellant has submitted a Daylight and Sunlight Assessment (DASA), but this does not address the impact on No 28.
12. Reference has been made to a previous permission for a dwelling on the appeal site dating from 2006¹. Based on the evidence before me, the appeal proposal would have a reduced scale and massing compared to the 2006 permission and would therefore have a lesser impact on No 28. However, the 2006 permission was not implemented and the evidence suggests that this permission has lapsed. This means that the 2006 permission does not represent a fallback scheme as it has not been demonstrated that it can still be built. Furthermore, the circumstances in place at the 2006 permission, and the Council's consideration of the effect on No 28, have not been fully set out. On that basis, the 2006

¹ LPA Ref: 2006/2359

permission does not lead me to a different conclusion on the harm to No 28 based on the evidence before me and my own observations.

13. The proposal would also be located close to the rear gardens and elevations of dwellings on Shakespeare Walk. Having regard to the relationship with these dwellings and the appeal proposal as well as the DASA, the development would not lead to material harm to the rear elevations and amenity areas of the dwellings of Shakespeare Walk in respect of daylight and sunlight. Due to the angled arrangement of the main building within the appeal proposal and the limited change along the site boundary, I also conclude that the proposal would not lead to material harm to the outlook from the rear of Shakespeare Walk.
14. Notwithstanding my conclusions in respect of Shakespeare Walk, I conclude that the proposal would lead to substantial harm to the living conditions of residents of No 28 in respect of loss of outlook and light.
15. The Council has submitted a number of policies with its questionnaire and policies are also referred to in the appellant's Statement of Case. Based on the evidence before me, the proposal would be contrary to the amenity requirements of Policy LP2 of the Hackney Local Plan 2020 (the Local Plan) and Policy D3 of the London Plan 2021. The proposal would also be contrary to the Framework with regards to achieving a high standard of amenity for existing and future users of places.

Character and Appearance

16. The appeal site consists of what was previously garden land attached to No 28 and contains a single storey building described as a studio. It is located in a residential area which primarily consists of attractive traditional dwellings of varying scales and massing.
17. A number of comments have been made about the principle of development on the site. However, even allowing for the historical development of the area, the development of this enclosed and underused site for housing in a built-up area with good access to services would be appropriate in principle.
18. The proposed building would be attached to No 28 which is one of a pair of attractive 2-storey dwellings, although No 26 has had a storey added at roof level. The appeal proposal is of a modern design that would contrast with the traditional appearance of its immediate neighbours. However, the appeal site is located within part of the streetscape that includes relatively modern buildings that are of a different character to the wider area. The height of the proposal would reflect that of a modern dwelling adjoining No 26, and it would be viewed as part of a group of buildings including traditional dwellings bookended by contrasting modern designs. Given that immediate context, a modern design of the scale of the appeal proposal may be appropriate.
19. However, there are elements of the design of the proposal which are of concern. The proposal would include a raised feature on a corner of the building which would appear as a contrived and incongruous element on a building with otherwise modern and clean lines. The proposed bin and bike stores also appear as clumsy features in what could otherwise be a coherent façade extending along the streetscape.

20. The Council also considers that more openings should be provided facing onto the street, particularly in respect of the kitchen and living/dining room. However, the proposed visualisations indicate that there would be an extent of hit-and-miss brickwork in the elevation directly adjacent to the pavement, and I consider that this is an appropriate response to introduce some interest into what could be an otherwise stark and blank elevation.
21. Given that I have accepted the principle of the development of the site as well as the scale of the proposal and the use of a modern design; my concerns relate only to matters of detailed design. Considered objectively and in context, the appeal proposal would lead to no more than moderate harm to the character and appearance of the area. Nevertheless, the proposal would be contrary to the design and character requirements of Policies D3 and H2 of the London Plan and Policy LP1 of the Local Plan with regards to achieving well-designed new homes.

Planning Balance and Conclusion

22. The appellant specifies that the Council is unable to demonstrate a 5-year housing land supply and that the 'tilted balance' of paragraph 11(d) of the Framework is triggered with regards to the presumption in favour of sustainable development. This states that permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits of the scheme, when assessed against the policies in the Framework taken as a whole having particular regard to key policies.
23. I have concluded that the proposal would lead to substantial harm to the living conditions of residents of No 28 in respect of outlook and light. I have also concluded that the proposal would lead to no more than moderate harm to the character and appearance of the area.
24. In respect of benefits, the proposed dwelling would add to the mix and supply of housing in the area, and would be in a sustainable location with good access to services. It would provide a self-build dwelling on a small site, both of which are supported by development plan policy. However, even given the Council's housing land supply position, the benefits arising from a single dwelling carry only limited weight in favour of the appeal. The proposal would not be an efficient use of land due to the identified harm arising from the development in respect of living conditions and character and appearance.
25. The UU includes a contribution to affordable housing, but the scale of the contribution would be of limited benefit. Other aspects of the UU relate to managing the impacts of the development itself and are therefore neutral in the overall planning balance.
26. The proposal would bring an underused site back into a productive use. I have considered whether the appeal site would represent previously developed 'brownfield' land. The definitions of brownfield land in the Framework and the London Plan excludes land in built-up areas such as residential gardens. The appeal site was previously part of the residential garden of No 28, although it has been separated from No 28 for a number of years. That said, the definition of brownfield land in the Local Plan does not exclude residential gardens. I am mindful that the Framework gives substantial weight to the value of using suitable brownfield land within settlements for homes, and that proposals for which should be approved unless substantial harm would be caused. However, even if I was to

conclude that the appeal site is brownfield land, this would not outweigh the harm to the living conditions of residents of No 28 which would be substantial.

27. Considered individually and cumulatively, the benefits arising from the proposal would only be limited. The adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole and the key policies. The proposal would therefore not represent sustainable development.
28. The proposal would conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. For the reasons given above, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR