



Appeal Decision

Hearing held on 4 February 2025

Site visit made on 3 February 2025

by A Caines BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2025

Appeal Ref: APP/U5360/W/24/3340933

109 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 failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Patrick Whelan against the Council of the London Borough of Hackney.
 - The application Ref is 2023/1231.
 - The development proposed is demolition of existing building and construction of a five storey with basement mixed-use building (sui generis and residential).
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and construction of a five-storey with basement mixed-use building (sui generis and residential) at 109 Green Lanes, Hackney, London N16 9BX in accordance with the terms of the application Ref 2023/1231, subject to the conditions in the attached schedule.

Procedural Matters

2. The appeal relates to a planning application that was not determined by the Council within the prescribed period. Subsequently, the Council indicated that it would have refused planning permission on grounds that the proposal would not make adequate provision for affordable housing, car free development, and a carbon offset contribution.
3. During the Hearing the matters in dispute narrowed to the amount of the affordable housing contribution and it became evident that the parties might reach an agreement on this matter. As a result, I postponed the closing of the Hearing to enable the submission and consideration of further viability information and an updated planning obligation. The final completed unilateral undertaking (UU), dated 1 May 2025, was received on 8 May 2025. Having determined that I had sufficient information to reach a decision I subsequently closed the Hearing in writing.
4. The site has previous appeal history and I have had regard to those decisions where relevant.¹

Main Issue

5. Based on all that I have seen, read, and heard, I consider that the main issue is whether the development would make adequate provision for affordable housing.

¹ APP/U5360/W/21/3277023 & APP/U5360/W/22/3307767

Reasons

6. The existing building is a former public house, currently in use as a Social Club with three flats above. The proposed replacement building includes social club facilities and six flats.
7. Policy H4 of the London Plan (the LP) sets a strategic target for 50% of all new homes delivered across London to be genuinely affordable, and explains how Boroughs may also require affordable housing contributions from residential development of less than ten units. Policy LP13 of the Hackney Local Plan 2020 (HLP) seeks the maximum reasonable amount of affordable housing; schemes of 1-9 units will be required to provide on-site provision or payments in lieu up to the equivalent of 50% of housing delivered as affordable housing, but subject to viability. This is further supported by an adopted supplementary planning document on S106 Planning Contributions (SPD) which requires 50% affordable housing on site or a payment of £50,000 per unit.
8. It is not in dispute that the delivery of genuinely affordable homes remains one of the biggest challenges for the area. However, in the lead up to the Hearing the main parties were some distance apart on the amount of the affordable housing contribution that the scheme could support on viability grounds. This was primarily due to a difference in their respective Existing Use Values (EUV).
9. Following the Hearing discussion the appellant revised their EUV to reflect more up to date local evidence. This has resulted in an improved affordable housing contribution of £280,000 to be secured by the UU. The Council has confirmed that this would be acceptable based on the further evidence provided.
10. While the affordable housing contribution still represents a shortfall against the full policy target of £300,000, it is supported by viability evidence which has been the subject of negotiations and agreement between professionals for both main parties. I attach considerable weight to the viability evidence and the agreed position. These factors lead me to conclude that the development would make adequate provision for affordable housing. As such, the proposal complies with Policy LP13 of the HLP, which enables negotiation and consideration to be given to the viability of affordable housing contributions on individual sites. For the same reason there is compliance with LP Policy H4.

Planning Obligation

11. In addition to the affordable housing contribution, the submitted UU includes a payment in respect of carbon offset measures, as well as measures to ensure that the development is car free. These obligations are related to requirements of development plan policies and are necessary to make the development acceptable in planning terms. They are all, furthermore, directly related to the development, and fairly and reasonably related in scale and kind to the development. The UU also includes a payment for monitoring costs which is based on the level and type of contributions in accordance with the formula set out in the SPD. The UU therefore complies with the relevant tests in the National Planning Policy Framework (the Framework) and Regulation 122 of the CIL Regulations 2010, so I have taken the commitments into account in reaching my Decision.

Other Matters

12. The Council has previously identified the existing building as a non-designated heritage asset. However, in the 2021 appeal decision (APP/U5360/W/21/3277023) the Inspector opined that the appearance of the building holds limited significance with little left to distinguish the building as a former public house. This reflects my own observations. In accordance with paragraph 216 of the Framework, I find that the social and economic benefits arising from the development through increased housing delivery, including affordable housing, and improved social club facilities, would be sufficient to outweigh any loss of significance in this case.
13. I have noted the concerns raised by interested parties, including in relation to neighbour impact, design, and suitability of the access arrangements. However, these matters were deemed acceptable in the previous appeal decision at the site (APP/U5360/W/22/3307767) and did not form part of the Council's case at this appeal. As there have been no material changes to the design, scale, and layout of the scheme since the previous appeal, I see no reason to reach a different conclusion in relation to these matters. Other concerns relating to land ownership and potential damage from construction activities are private or legal matters which do not alter my assessment of the planning merits of the scheme.

Conditions

14. The Council and the appellant have agreed a number of conditions, including pre-commencement conditions. I have considered these in terms of both the justification for individual conditions and appropriate wording, making amendments where necessary in the interests of clarity and precision, and to meet the relevant tests in the Framework.
15. The time limit and approved plans conditions are imposed as standard and to provide certainty.
16. A condition relating to ground contamination is necessary in the interests of the health and safety of all site users. A condition requiring a Demolition and Construction Management Plan is necessary to mitigate and minimise as far as reasonably possible any disturbance to neighbouring residents throughout the construction works. Drainage conditions are necessary to protect site users and the surrounding area from any increased risk of surface water flooding. It is appropriate for these to be worded as pre-commencement conditions as they relate to an early part of the development and in light of the implications which could otherwise arise should works proceed in the absence of their prior resolution.
17. A condition relating to details of external materials is necessary to maintain the character and appearance of the area. Conditions relating to refuse and bicycle storage facilities are necessary to meet the needs of the users of the development and to encourage recycling and use of sustainable transport. Various conditions relating to boilers, mechanical ventilation systems, and construction machinery are necessary in the interests of air quality and to meet carbon emission standards. A condition relating to bird nesting features is necessary to promote biodiversity gain. Finally, conditions relating to noise mitigation, opening times, and a requirement for obscure glazing in some windows, are necessary to protect the living conditions of neighbouring residents.

Conclusion

18. The proposal accords with the relevant development plan policies. Therefore, for the reasons given, I conclude that the appeal should be allowed and planning permission granted.

A Caines

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 drawing nos:
080-001; 100 Rev A; 101 Rev B; 102 Rev B; 103 Rev B; 104 Rev B;
105 Rev B; 106 Rev A; 200 Rev A; 201 Rev B; 202 Rev B; 203 Rev A;
300 Rev A; 301 Rev A; 302 Rev A; 303 Rev A.

Pre-commencement

- 3) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:
 - i) a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
 - ii) the site has been remediated in accordance with the approved measures and timescale; and
 - iii) a verification report has been submitted to and approved in writing by the local planning authority.If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:
 - i) additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
 - ii) a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.
- 4) No development shall take place until a Demolition and Construction Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall include (but not limited to) details of 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) No development shall take place until a detailed surface water drainage scheme and a plan for its management and maintenance for the lifetime of the development, has been submitted to and approved in writing by the local planning authority. This shall include at least one suitable sustainable drainage system (i.e. water butt with overflow, raingarden, bioretention planter box, living roof (substrate depth of 80-150mm excluding the vegetative mat), permeable paving etc. If soakaways are used, an infiltration test must be carried out to demonstrate that the capacity of the soil is suitable for infiltration. It must be demonstrated that there will be no increase in surface water flow being discharged offsite and an overall reduction in peak flow rate and volume. The development shall be carried out and maintained in accordance with the approved details.
- 6) No development shall take place until a scheme for the provision and implementation of flood resilient and resistant construction details and measures for the site against surface water flooding has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) No above ground development shall take place until details / samples of the materials to be used for the external surfaces of the building, including walls, cladding, glazing and doors, 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.

Pre-occupancy

- 8) Prior to the occupation of the development hereby approved, the following shall be provided within the curtilage of the site and be maintained and retained thereafter:
 - i) For the residential use: enclosed, secure, accessible on-site bicycle storage facilities for 14 bicycles
 - ii) For the social/community use: enclosed, secure, accessible on-site bicycle storage facilities for 2 bicycles
- 9) Prior to the occupation of the development hereby approved, the following shall be provided within the curtilage of the site and be maintained and retained thereafter:
 - i) For the residential use: 1200L waste storage, of which 450L must be allocated for refuse and 750L for recyclables
 - ii) For the social/community use: 2200L waste storage
- 10) Prior to the occupation of the development hereby approved, an Operational Management Plan in relation to the social/community use shall be submitted to and approved in writing by the local planning authority. This shall set out measures to minimise and mitigate any noise disturbance including (but not limited to):
 - i) Delivery and servicing times
 - ii) Measures to minimise noise from servicing areas and activities
 - iii) Details of the dispersal policy and noise mitigation/breakout measures

The approved mitigation measures shall be implemented in full prior to the first occupation of the development and the Operational Management Plan shall be adhered to thereafter.

- 11) Prior to the occupation of the development hereby approved, details of the mechanical ventilation system, which is to include a NOx filtration system, including position of the inlets and vents, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out and maintained in accordance with the approved details.
- 12) Prior to the occupation of the development hereby approved, a minimum of 2 Swift nesting bricks or boxes shall be provided at or close to eaves level of the building in accordance with details which have first been submitted to and approved in writing by the local planning authority. The nesting bricks/boxes shall be retained in accordance with the approved details.

General terms

- 13) All non-Combined Heat and Power space and hot water fossil fuel (or equivalent hydro-carbon based fuel) boilers installed as part of the development hereby approved shall achieve dry NOx emission levels equivalent to or less than 40 mg/kWh.
- 14) 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>
- 15) All ground floor windows in the rear (west) elevation of the development hereby approved shall be non-opening and obscurely glazed to a minimum of level 3 of the Pilkington scale or equivalent, and retained as such.
- 16) The social/community use shall only take place between the following hours:
1100 - 2300 Mondays - Saturdays
1100 - 2230 Sundays and on Bank or Public holidays

****End of conditions****

APPEARANCES

FOR THE APPELLANT:

Patrick Whelan

Craig More More Design

James Moorhouse Hardings Surveyors

Anna-Marie Whelan Barnes and Partners

FOR THE LOCAL PLANNING AUTHORITY:

Christopher Poad

James Carney

INTERESTED PARTIES:

Elizabeth Keogh

Darren Hobbs

Joe Bacon

DOCUMENTS SUBMITTED AFTER THE HEARING

1. James Moorhouse letter dated 10 February 2025
2. Council's response to James Moorhouse letter, received 11 February 2025
3. Completed UU dated 1 May 2025, received 8 May 2025