



Appeal Decision

Site visit made on 25 June 2025

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 July 2025

Appeal Ref: APP/U5360/W/25/3362931

28 Brooke Road, Hackney, London N16 7LS

- 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 Gluck against the decision of the Council of the London Borough of Hackney.
 - The application reference is 2025/0098.
 - The development proposed is further excavation of existing basement level, together with front and rear lightwells, to facilitate amalgamation of studio flats 1 and 2 to form a 2-bed self-contained flat.
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Decision

1. The appeal is allowed, and planning permission is granted for further excavation of existing basement level, together with front and rear lightwells, to facilitate amalgamation of studio flats 1 and 2 to form a 2-bed self-contained flat at 28 Brooke Road, Hackney, London N16 7LS in accordance with the terms of the application reference 2025/0098 subject to the conditions set out in the schedule to this decision.

Application for costs

2. The appellant has made an application for costs against the Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are firstly, the effect of the proposed development on the character and appearance of the host building and the local area, and secondly, whether the proposal would provide satisfactory living conditions for future occupiers with regard to light and outlook.

Reasons

Character and appearance

4. The appeal property is a 3-storey mid-terrace building of traditional style that is set back from the road behind a short front garden. It is located within a mainly residential area wherein terraces predominate.
5. The proposal is to enlarge and alter the basement of No 28 to form part of a new self-contained flat with 2 bedrooms. A similar scheme was recently refused planning permission on application and at appeal. By amending the design of the proposal, the appellant considers that the objections raised to the previous development have been overcome.

6. At the front, a new flat wall and window would be introduced below the existing ground floor bay that would face into a new lightwell. The glazed units within this new window would broadly line up with their existing counterparts above. As a result, there would be no significant disruption to the pattern of fenestration in the front elevation of No 28.
7. The new lightwell would be set back from the perimeter of the front garden and the rear edge of the footway. Given the angle of view, the new front window would not be readily evident to any passerby. Because the new front lightwell would be level with the ground surface, it, too, would be largely concealed from public view with the main visual clue to its presence being a black metal railing around 3 sides for safety. As the new railing would be low-level and partially screened from the road by a new bin store along the highway frontage of the site it would be an modest feature in the streetscape.
8. No other properties within the same terrace as No 28 include a front lightwell with one exception, which is No 30. In that immediate context, the proposed lightwell would be atypical. Nevertheless, almost none of the enlarged front elevation of No 28 would be visible from the road with the new railing an inconspicuous feature. As a result, the proposal would not draw the eye as a discordant or unsympathetic element nor would it affect how the scale, proportions or traditional character of the host building are perceived in the street. For the same reasons, it would not upset the rhythm and unity of the wider terrace. I saw that several other properties in a neighbouring terrace facing Brooke Road have front lightwells enclosed by railings that are evident from the road. Such features are therefore part of the established character of the streetscape and the local area to which the site belongs.
9. On the first main issue, I therefore conclude that the proposed development would not significantly harm the character and appearance of the host building or the local area. As such, it does not conflict with Policy D4 of The London Plan (TLP), Policy LP1 of the Hackney Local Plan 2033 (LP) or the guidance within the Council's Supplementary Planning Document, *Residential Extensions and Alterations* (SPD). These policies and guidance aim to ensure that new development responds to local character and distinctiveness and is compatible with the existing townscape.

Living conditions

10. Each of the bedrooms within the proposed flat would be served by a single window facing into a new lightwell. Each window would therefore provide the sole external outlook from and source of lighting to a main habitable room.
11. No objection is raised in relation to sunlight. With regard to daylight, both main parties agree that the proposal would meet the 30-degree test, where a line drawn from the centre of the window in question at this angle above the horizontal passes over any obstruction. From the submitted plans, I have no reason to reach a different conclusion on this matter. The Council's SPD explains that the purpose of the test is to provide a guide as to whether a habitable basement room would receive adequate daylight. Given that finding and taking into account the orientation of the rooms and the placement of windows I share the appellant's view that each bedroom within the new flat would receive adequate levels of daylight.
12. The outlook from each bedroom would be primarily towards the walls of the lightwell. At the front, the view would also include the new railings and the underside of the existing ground floor bay at close range. At the rear, the grill

covering the new lightwell would also be evident. While these arrangements would restrict outlook, skyward views would also be available. Furthermore, the bedrooms would form part of a larger residential unit wherein space at ground floor would compensate for any deficiencies in outlook within the basement. In those circumstances, I find that the outlook for future occupiers would be acceptable.

13. On the second main issue, I conclude that the proposal would provide satisfactory living conditions for future occupiers. As such, it does not conflict with TLP Policy D4, LP Policies LP1 and LP17 or the Council's SPD insofar as they aim to safeguard residential amenity. The proposal therefore overcomes the objections raised to the previous appeal scheme.

Other matters

14. The Council's Drainage Officer raises no objection although does recommend that a condition be imposed to ensure that the excavation works do not increase the potential for ground water flooding. With such a condition imposed, a safeguard would be in place to minimise the risk of flooding. From my inspection of the plans, sufficient space would remain available at the front of the building to accommodate the bin stores, as proposed.
15. There is nothing substantive before me to indicate that the stability of the ground beneath No 28 or neighbouring properties or their foundations would be unduly compromised if the development were to proceed. The need for a party wall notice is covered under other legislation. While the proposal could lead to a higher occupancy level within the host building than its use as bedsits, I am not convinced that the proposal would amount to overdevelopment or lead to overcrowding.
16. Some noise, dust, vibration and general disturbance to others during excavation or construction is possible given the nature of the works involved. However, this potential disruption would be over a limited time, and it is insufficient reason to withhold planning permission. Since each development should be assessed on its own merits, a decision in this case would not set a precedent for others to follow.

Conditions

17. The Council has not suggested any conditions be imposed if the appeal were to be allowed. Nevertheless, several conditions are necessary to make the development acceptable. In addition to the standard time limit condition, it is necessary to impose a condition that requires the development to be carried out in accordance with the approved plans for certainty. To ensure the satisfactory appearance of the development, a condition is imposed to require that the external materials match those of the existing building.
18. A condition requiring the provision and retention of refuse storage is necessary to ensure that these facilities are available to future occupiers. A condition is also imposed to require an appropriate assessment and to require that measures are incorporated into the development, if necessary, so that it does not increase the risk of ground water flooding. The condition suggested by the Drainage Officer as set out in the Officer's report has been reworded for clarity and precision.

Conclusion

19. Overall, there are no material considerations that indicate the development should be determined other than in accordance with the development plan. For the reasons set out above, I therefore conclude that the appeal should be allowed.

Gary Deane

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Sheet Nos E 00, E 01, E 02, E 03, E 04, E 05, P 01, P 02, P 03, P 04, P 05, P 06 and P 07.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 4) Prior to first occupation of the development hereby permitted, the refuse and recycling storage facilities shall be provided in accordance with the approved plans and permanently retained thereafter.
- 5) No development below ground level shall commence until a report demonstrating that the basement and lightwells will not increase the potential for groundwater flooding to itself or the surrounding area has been submitted to and approved in writing by the local planning authority. The report shall include details of appropriate controls including flood resilience and/or resistance measures against surface water and groundwater (if identified) and a mitigation plan if groundwater is unexpectedly encountered during excavation. The approved measures shall be incorporated and completed before the basement accommodation hereby permitted is first occupied. The basement shall be constructed and completed in accordance with the approved plans and in line with BS 8102:2022: Code of Practice for Protection of Below Ground Structures Against Water Ingress.