

Appeal Decision

Site visit made on 2 August 2016

by Y Wright BSc (Hons) DipTP DMS MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 October 2016

Appeal Ref: APP/E5900/W/16/3144117

519-523 Cambridge Heath Road, London E2 9BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Central Training Academy Limited against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/14/03474, dated 5 December 2014, was refused by notice dated 23 October 2015.
 - The development proposed is demolition of the existing building and construction of a new building with re-provision of training facility (Class D1) at ground floor and provision of 9 residential dwellings (Class C3) on first to fourth floors (2 x 3 bed, 5 x 2 bed and 2 x 1 bed).
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing building and construction of a new building with re-provision of training facility (Class D1) at ground floor and provision of 9 residential dwellings (Class C3) on first to fourth floors (2 x 3 bed, 5 x 2 bed and 2 x 1 bed) at 519-523 Cambridge Heath Road, London E2 9BU in accordance with the terms of the application, Ref PA/14/03474, dated 5 December 2014, subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Central Training Group Ltd against the Council of the London Borough of Tower Hamlets. A separate application for costs has also been made by the Council of the London Borough of Tower Hamlets against Central Training Group Ltd. These applications are the subject of separate Decisions.

Procedural Matters

3. Reference is made by both main parties to the 2015 London Plan and the 2012 London Plan Housing Supplementary Planning Guidance. However since submission of the appeal, revised versions of both documents have been published, dated March 2016. Both main parties have been given the opportunity to comment on these more recent versions and responses received have been taken into account within my decision. I therefore consider the appeal on the basis of the London Plan (2016) (LP) and the London Plan Housing Supplementary Planning Guidance (2016) (SPG).
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Main Issues

4. The main issues are:

- Whether the proposal optimises the use of the site for residential development; and
- The effect of the proposal on the level of risk to human health due to its proximity to a gas holder station.

Reasons

Whether the proposal optimises the use of the site for residential development

5. The Council claims that the proposal would not maximise the potential of the site for residential development and that it could add 2 more flats to optimise such use and provide affordable housing. The provision of 11 units rather than 9 would require the provision of affordable housing in accordance with Policy SP02 of the Tower Hamlets Core Strategy Development Plan Document (2010) (CS), which sets out the development threshold and target for affordable housing.
6. The Council cites LP Policy 3.13 in its reasons for refusal which states that affordable housing should normally be required '*on a site which has capacity to provide 10 or more homes, applying the density guidance set out in Policy 3.4*'. The Council also refers to the Tower Hamlets Managing Development, Development Plan Document (2013) (MD) Policy DM3 which, amongst other things, seeks development that maximises affordable housing.
7. Whilst not mentioned in the reasons for refusal, it is nevertheless appropriate to consider LP Policy 3.4 and the SPG as these provide detailed policy and guidance in relation to the implementation of LP Policy 3.13. Both main parties refer to this policy and SPG within their evidence.
8. Both LP Policy 3.4 and the SPG seek to optimise the housing potential of sites. The former provides guidance within its supporting text in the form of a density matrix (Table 3.2). This sets out a range of housing densities (the number of habitable rooms and dwellings per hectare) to be applied for development sites based on a broad type of locations. It is agreed by the main parties that the appeal site is in an urban location with good public transport accessibility. As such, the table shows that the site should provide a residential density range between 200 and 700 habitable rooms per hectare (hr/ha).
9. It is undisputed that the proposed scheme would provide 1032 hr/ha which would already be substantially above the density level set out in the matrix. The LP and SPG advise that subject to the provision of additional, significant reasons, development above the density level range may be justified, but that normally proposals should be resisted. This is subject to a number of considerations, set out within the SPG, including access to sunlight and daylight; size and layout standards; open space provision and impacts on visual amenity, views or the character of the area. The Council considers that the development of the site for 9, 10 or 11 units would satisfy the SPG requirements in this regard. It suggests that this demonstrates an exceptional circumstance justifying a greater density on the site than

advised in the density matrix. In relation to the appeal proposal I see no reason to disagree with this view.

10. However, whilst I acknowledge that the addition of 2 more units within the scheme would provide the benefit of affordable housing, I am not satisfied that an even higher density of development would meet all of the SPG considerations. Indeed, whilst the Council suggests that further units would not result in substantial changes to the building's mass, form or scale, the suggested replication of the first floor unit design and layout for the second and third floors, would remove the set backs from these floors.
11. Whilst I do not have full details of these alternative design plans before me, I nevertheless consider that this would have the potential to adversely increase the mass and bulk of the development and reduce the amount of private balcony space within the building. Consequently, based on the available evidence, I am not satisfied that it has been demonstrated to me that a higher density of development above that already proposed at this site, would be justified.
12. Both main parties acknowledge that the balance of housing types proposed by the appeal and the Council's preferred 11 unit scheme would not be in accordance with Table 1 of DM Policy DM3 (7). Nevertheless the appellant's proposal would deliver a wider mix of accommodation as it would also include 3 bedroom units rather than just 1 and 2 bedrooms. This would broadly reflect the aspirations of this part of the policy, though not the exact proportions sought. In addition it would also not be in conflict with other parts of the policy.
13. Whilst I accept that the proposal would not maximise the number of flats within the site, this is not what is required when considering the proposal against existing policies and guidance. Indeed the SPG seeks a balanced approach to optimising output and states that '*...while the best use should be made of development opportunities, proper account must be taken of the range of factors which have to be addressed to "optimise," rather than simply maximise, housing potential*'.
14. Consequently taking the above factors into account, I conclude overall that the development would optimise the use of the site for residential development and would be in accordance with LP Policies 3.13 and 3.4, the SPG and CS Policy SP02.

Proximity to a gas holder station

15. The appeal site is located within the Health and Safety Executive (HSE) middle zone around 135 m from the Bethnal Green gas holder station. On this basis the HSE has advised against the granting of planning permission in this case. I note that the HSE reserves the right to have an application called-in for consideration by the Secretary of State, should a local planning authority intend to grant permission against its advice.
16. The Tower Hamlets Managing Development, Development Plan Document (2013) (MD) Policy DM30(2) advocates that proposals will not be supported in close proximity to hazardous installations where they would cause a significant hazard to health and the environment. The accompanying justification text

states that this policy adds further guidance to existing LP policies including LP Policy 5.22. This includes requiring that the risks of development near to hazardous installations are balanced with the benefits of the proposal and that existing patterns of development are taken into account. Whilst this policy does not form part of the reason for refusal, it is referred to by the Council in their statement of case.

17. I recognise that the advice of the HSE should not be departed from lightly. However the proposal would only add a small number of dwellings to the existing urban environment. In addition the appellant has directed me to several residential developments within the local area where the Council has granted planning permission previously, despite similar HSE advice. I note that requests to call-in these previous applications were not made by the HSE. My attention has also been drawn to an Inspector's appeal decision from 2012¹ which allowed residential development opposite the appeal site, despite the advice of the HSE. Whilst I must consider this appeal on its own merits I have nevertheless taken these other cases into account.
18. I understand that the gas holder station has been de-commissioned and the site is allocated for mixed use redevelopment as set out in the MD. Notwithstanding that the Council has not as yet removed the hazardous substance consent, based on the evidence before me, there appears to be no operational or other constraints for the site not to come forward for redevelopment. In addition the HSE itself states that the likelihood of a major accident occurring at this locality is small.
19. Consequently as I have no substantive evidence before me which supports the claim that the level of risk would be adversely impacted by the proposal I do not consider that it would result in a significant increased hazard to health. In addition, whilst the proposal would not provide affordable housing, it would deliver a number of benefits, including 9 market dwellings of an acceptable layout and design and that would meet required space standards. I therefore conclude that the development would be in accordance with MD Policy DM30(2) and LP Policy 5.22.

Other matters

20. The property is located within the Regents Canal Conservation Area, which is centred on the canal that runs east to west perpendicular to Cambridge Heath Road. As set out in the Regent's Canal Conservation Area Character Appraisal (2009) the designation protects the special character of the banks of the canal and specific canal features such as the locks, bridges, wharves, moorings and towpath as well as its townscape quality, historic features and associated built fabric.
21. Whilst both parties agree that the proposal would enhance the character and appearance of the Conservation Area, I have nonetheless, had special regard to the statutory duty² to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
22. I note that the Council considers that the development by reason of its design quality, form and massing would enhance the character and appearance of the adjoining buildings and the Conservation Area. I concur with this view and am

¹ Appeal Ref: APP/E5900/A/11/2161527

² Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

satisfied that the proposal would accord with the development plan and Framework in this regard.

Conditions

23. I have considered the conditions suggested by the Council in light of the advice given in the Planning Practice Guidance (PPG). As such I impose all of them, though change the wording of some in the interests of precision and enforceability. I am satisfied that the conditions set out in my decision meet the tests within the PPG.
24. I agree that a condition is needed to secure compliance with the submitted plans, for the avoidance of doubt and in the interests of proper planning. In addition a condition requiring details on the materials to be used for the development is necessary, in the interests of the character and appearance of the area.
25. To ensure that the living conditions of future occupiers will be acceptable, I impose conditions for the storage of refuse and recycling, restrict the opening hours for use of the training facility and require the provision of sound insulation and contamination schemes.
26. To promote sustainable transport and to reduce pressure for on-street car-parking I impose conditions requiring the provision of cycle storage and a scheme to secure the occupation of the site as a car-free development.

Conclusion

27. For the reasons given above and having considered all other matters raised, I conclude that the appeal is in accordance with the development plan as a whole and should be allowed.

Y. Wright

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 approved plans numbered SO.00 Rev A, EX.00, EX.01, EX.02, EX.03, EX.04, EX.05, EX.06, GA.00 Rev C, GA.01, GA.02, GA.03, GA.04, GA.05, GE.01 Rev D, GE.02 Rev B, GE.03 Rev B, GS.01 Rev B and GS.02 Rev B.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces (including privacy screens) of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details of the provision of refuse and recycling storage facilities to serve the development hereby approved have been submitted to and approved in writing by the local planning

authority. Prior to the first occupation of the development, the storage facilities shall be provided in accordance with the approved details and retained thereafter.

- 5) The Development hereby permitted shall not commence (except for demolition and remediation) until a sound insulation scheme has been submitted to and approved by the local planning authority in consultation with the Network Rail. The Scheme shall set out in detail how the proposed development will be mitigated from noise associated with operation of the neighbouring railway. The Scheme should account for the acoustic character of the sound associated with the railway, applying corrections according to BS4142:2014, and should ensure that internal noise levels achieve the guidance recommended in BS8233:2014.
- 6) Development of the site shall not begin until a contaminated land scheme has been submitted to the local planning authority and written approval has been granted for the scheme. The scheme will identify the extent of any contamination and the measures to be taken to avoid risk to the public, buildings and environment when the site is developed. Details of the scheme should include:
 - i. A 'desk study report' documenting the history of the site.
 - ii. A proposal to undertake an intrusive investigation at the site based on the findings of the desk study.
 - iii. A 'site investigation report' to investigate and identify potential contamination.
 - iv. A risk assessment of the site.
 - v. Proposals for any necessary remedial works to contain treat or remove any contamination.

Occupation of the building/dwellings hereby approved shall not begin until:

- i. The remediation works approved by the local planning authority as part of the remediation strategy have been carried out in full. If during the remediation or development work new areas of contamination are encountered, which have not been previously identified, then the additional contamination should be fully assessed in accordance with condition [1(iii-iv)] above and an adequate remediation scheme shall be submitted to and approved in writing by the local planning authority and fully implemented thereafter.
- ii. A verification report, produced on completion of the remediation works to demonstrate effective implementation of the remediation strategy, has been submitted to and approved in writing by the local planning authority. The content of the report must comply with best practice guidance and should include details of the remediation works carried out, results of verification sampling, testing and monitoring and all waste management documentation showing the classification of waste, its treatment, movement and/or disposal in order to demonstrate compliance with the approved remediation strategy.

- 7) The D1 use hereby permitted shall not operate outside of the hours defined below unless agreed otherwise in writing by the local planning authority:
07:00 - 22:00 Monday – Saturday
10:00 – 18:00 Sundays and Bank Holidays
- 8) The cycle storage shown on the approved drawings shall be provided prior to the occupation of the development and thereafter shall be made permanently available for the occupiers of the building.
- 9) Before the development hereby permitted is occupied arrangements shall be agreed in writing with the local planning authority and be put in place to ensure that, with the exception of disabled persons, no resident of the development shall obtain a resident's parking permit within any controlled parking zone which may be in force in the area at any time.