
Appeal Decision

Site visit made on 10 October 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 25th October 2016

Appeal Ref: APP/E5900/W/16/3150567
357 - 361 Commercial Road, London E1 2PS

- 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 Clapton Properties c/o Clockworks Estates against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/15/03058, dated 29 October 2015, was refused by notice dated 27 January 2016.
 - The development proposed is described as "first floor rear extension, second floor rear extension and roof extension at 361 Commercial Road. This proposal also involves a second floor rear extension to 357 and 359 Commercial Road. The proposals facilitate the addition of 5 no self-contained flats together with ancillary storage for bikes and bins at ground floor."
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application form refers to the addition of 5 self-contained flats. However, there are 4 existing self-contained flats located within the upper floors of 357-361 Commercial Road (Nos. 357-361). The proposal would involve alterations to the buildings to create 5 self-contained flats, but the submitted plans and Design and Access Statement indicate that this would result in a total of 8 self-contained flats taking account of the loss of an existing duplex flat in No 361 as part of the conversion. Consequently, the development would consist of a net addition of 4 self-contained flats. I have determined the appeal on that basis.

Main Issues

3. The main issues are:
 - the effect on the character and appearance of the host building and Commercial Road Conservation Area;
 - the effect on the living conditions of occupiers of neighbouring properties, with particular regard to Nos. 355 and 363A Commercial Road and matters of outlook and daylight, and;
 - whether the development would provide for a satisfactory living environment for existing and future occupiers of 357-361 Commercial Road, with particular regard to outlook, security and legibility of access.
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Reasons

Character and appearance

4. Commercial Road Conservation Area consists of a historic townscape on both sides of a section of Commercial Road located between Sidney Street to the west and Lukin Street to the east. The Conservation Area is characterised by predominantly three storey terraces along Commercial Road, with significant uniformity to the Grade II listed terrace of residential properties located on its southern side (Nos. 300-334 evens). The Grade II listed St Mary and St Michael Church defines the eastern entrance to Commercial Road Conservation Area on the southern side of Commercial Road at the junction with Lukin Street. Commercial Road is a wide highway which offers both long and short views of the individual buildings and terraces.
5. There is variety of individual buildings within a terrace on the northern side of Commercial Road. A synagogue is located centrally within this terrace with surrounding three storey buildings of a similar scale comprising commercial premises at ground floor level with residential accommodation to upper floors. There is some variation in detailing of the individual buildings, together with modern buildings to the western end of this terrace consisting of up to five storeys. The immediate surroundings of the terrace includes a modern four storey building at the junction with Jubilee Street (No 367), together with the Grade II listed George Tavern Public House on the opposite side of the junction.
6. The appeal property forms part of Watney Market District Centre and is located within the terrace on the northern side of Commercial Road which together with buildings in its immediate surroundings offer a positive contribution to the character of the Conservation Area. Nos. 357-361 are part of a continuous and cohesive group of three storey terraces of uniform alignment which provide a transition from the larger footprints of taller buildings that occupy sites towards the junctions of Bromehead Street and Jubilee Street respectively. Although the shop fronts to the ground floor of the terrace are diverse in appearance, the upper floors of the buildings are set back and display a greater harmony in scale and proportions with complementary parapet rooflines and predominantly butterfly roofs. Individually, Nos. 357- 361 display variety and visual interest through differences in detailing to upper floors, whilst sustaining the characteristic townscape with complementary building lines, massing, proportions and use of stock brick and white detailing.
7. The appeal proposal seeks to extend the buildings by adding a roof extension to No 361 to create third floor accommodation, together with a first and second floor rear extension to the property. An additional second floor roof extension would also be added to Nos. 357 and 359 above an existing flat roofed first floor rear extension. The extensions would facilitate the conversion of the upper floors of No 361 from a single duplex flat (2 bedroom 3 person) into 1 duplex flat (1 bedroom 2 person) and 3 studio flats (1 bedroom 1 person), and the addition of a single flat (1 bedroom 2 person) to the second floor of Nos. 357 and 359.
8. The roof extension at No 361 would consist of a flat roof with an increase in height, bulk and massing when compared to the existing butterfly roof. The roof extension would be set back behind the existing parapet roof line which would reduce its prominence when viewed from street level on the northern

side of Commercial Road. Nevertheless, it would be visible from the footway on the southern side of Commercial Road and the properties opposite. From these viewpoints, the proposal would harmfully alter and introduce an irregular and bulky appearance to the overall roof profile of No 361 when viewed against the roof profile and parapets of surrounding buildings. In this respect, the addition of an incompatible and insubordinate roof form would appear incongruous and harmful to the character and appearance of No 361 and the surrounding terrace.

9. In reaching the above findings, I have taken into account that Nos. 357-361 and the buildings surrounding display some variation in parapet rooflines which largely screen the existing butterfly roof forms at street level along Commercial Road. However, the higher parapet roofline of No 357 is consistent with the synagogue and other properties in the terrace to the west. Furthermore, the transition of the parapet roofline and butterfly roofs from east to west along the terrace would be harmfully disrupted by the prominent addition of a flat roof extension with external vertical cladding at No 361 which would be visible above the lower parapet section. This harmful effect would also be visible at the rear of the properties from Bromehead Road which consists of a footpath at the side of the eastern end of the terrace. The absence of a butterfly roof to No 363, the inversion of others along the terrace and the presence of taller buildings at the western end of the terrace and to the east, does not justify the harm identified.
10. With respect to the rear elevations of No 357 and 359, there is an existing two storey flat roof extension that projects up to the rear boundary of those properties, together with an existing second floor outrigger of modest depth located towards No 361. There are also a number of other extensions along the terrace row, including a single storey flat roof extension at No 361 comprising the full depth of the plot. Nevertheless, the three storey terraced properties are predominantly unextended above first floor level and the main rear elevations, therefore, remain visible at second floor level. In contrast, the proposal would result in an extension to the rear of Nos. 357 - 361 which would obscure the original rear elevation aside from sections of butterfly roof at Nos 357 and 359. Consequently, the extension would be viewed as an insubordinate and harmful addition to the host buildings that would detract from their character and appearance and that of the surrounding terrace.
11. The relationship of the rear extensions to the host buildings and surrounding terrace would be visible from Bromehead Road. From this perspective, the harmful visual effect would be worsened by the significant increase in height, bulk, massing and depth of the extension at the rear of No 357-361 which would appear dominant and incongruous when viewed against the rear elevations of the surrounding terrace. This harmful effect would not be mitigated by the contrasting presence of taller buildings of considerable depth to the east and the background of the larger scale and massing of modern buildings towards the western extent of the terrace.
12. In reaching the above findings, I have taken into account the presence of a number of extensions to rear elevations comprising substantially different character to their host buildings, including flat roofs. However, the specific circumstances which led to these extensions are not before me and in any case, the relationship of additions to each building clearly differs from the host

building and the appeal proposal. As a consequence, the diversity of rear extensions in the surrounding area does not justify the harm identified.

13. I conclude that the development would harm the character and appearance of the host building, and consequently fail to preserve the character and appearance of the Commercial Road Conservation Area. The proposal would, therefore, be contrary to Policy SP10 of the Tower Hamlets Local Development Framework Core Strategy (CS), adopted September 2010 and Policy DM27 of the Local Plan Managing Development Document (MDD), adopted April 2013. When considered together these policies seek to ensure new development is of good quality design and high quality architecture which contributes positively to local distinctiveness, whilst preserving or enhancing the significance of the historic environment, including conservation areas. The policies are consistent with the National Planning Policy Framework (the Framework) and Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
14. As the site is in a conservation area, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of that area. Paragraph 131 of the Framework requires that account be taken of the desirability of sustaining and enhancing the significance of heritage assets, and of new development making a positive contribution to local character and distinctiveness. Rather than make the positive contribution desired by paragraph 131 of the Framework, the proposal would harm local character and distinctiveness. Paragraph 132 of the Framework states that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation.
15. The harm caused would be significant in terms of the immediate surroundings of the proposal and the impact on the host building. However, the harm would be less than substantial to the significance of Commercial Road Conservation Area as a whole, given the presence of modern buildings in the immediate surroundings of increased scale, height, bulk, massing and architectural style. In these circumstances, paragraph 134 of the Framework requires that the less than substantial harm be weighed against any public benefits.
16. The public benefit suggested by the appellant is that the development would positively contribute to the supply of housing in a sustainable location and the associated benefits of additional residents to the viability of the town centre. These are positive benefits to which I attribute moderate weight based on the scale of development proposed and taking account of the minor adverse effect of the associated loss of an employment use consisting of an existing taxi business at No 361. Consequently, the public benefits of the development do not outweigh the less than substantial harm to Commercial Road Conservation Area that I have identified with regard to the great weight to be given to the asset's conservation.

Living conditions – neighbouring properties

17. The appellant has provided evidence relating to matters of privacy and outlook, together with a Daylight, Sunlight and Overshadowing Report, dated October 2015 reflecting an assessment in accordance with Building Research Establishment (BRE) criteria. It is common ground between the main parties that the development would not result in harm in terms of loss of privacy to surrounding properties and there would be no significant impact on the

occupiers of properties to the rear or No 367 given the separation distances involved. However, the Council have expressed concern relating to the impact on the outlook of the occupiers of neighbouring properties at the immediately adjacent properties - Nos. 355 and 363A.

18. The rear elevation of No 355 is north facing, as are the other rear elevations within the terrace. As a consequence, the rear elevation of this property does not receive direct sunlight except on limited occasions in summer and therefore the windows do not have a reasonable expectation of sunlight. Furthermore, the windows from ground to second floor of No 355 have been assessed with respect to daylight. In this regard, daylight levels to the windows are already somewhat limited by the presence of two storey extensions of considerable depth at No 357 and the Synagogue to the other side. However, the proposal would have only a negligible effect upon existing daylight levels. Consequently, the resultant change arising from the proposal would not be sufficient to justify harm to the existing living conditions of occupiers of No 355 in terms of loss of daylight.
19. Notwithstanding the above, the appeal proposal would add a second storey extension to No 357 and 359 of considerable depth resulting in a substantial elevation of built form of around 8m in height along the side boundary with No 355. When taken together with the existing extension to the rear of the synagogue to the opposite side, I consider that the increased height of the extension would result in significant overbearing and a greater sense of enclosure to occupiers of No 355 and its rear yard. The consequent impact on the outlook from the property would result in significant harm to the existing living conditions of occupiers of No 355. The harm would not be mitigated by the retention of a gap between the extension to the rear of Nos. 357 and 359.
20. The Daylight, Sunlight and Overshadowing Report indicates that there would be a moderate adverse impact on the existing provision of daylight to a second floor window of No 363A arising from the extensions. The daylight provision to this window is already limited by its northern aspect, together with surrounding built form and therefore, is below a Vertical Sky Component (VSC) of 27% measured at the centre of a window. In this respect, BRE guidelines indicate that a window may be adversely affected if the VSC measured at the centre of the window is less than 27% and less than 0.8 times its former value. The resultant ratio for the second floor window of No 363A would be less than 27% and 0.66 times its former value. I consider that this loss of daylight would result in significant harm to the living conditions of occupiers of the second floor of No 363A.
21. In addition, although the Daylight, Sunlight and Overshadowing Report indicates that the extensions would have only a minor adverse effect with respect to overshadowing upon the existing roof terrace at No 363A. I consider that the increased height and depth of the extension along the side boundary with No 363A would have a significant overbearing effect on this amenity area. Consequently, this would also harm the living conditions of occupiers of No 363A. Whilst the absence of an extension to the rear of No 363 to the opposite side would prevent an immediate sense of enclosure and there is a larger four storey building (No 367) further to the east, this does not justify the harm identified.

22. I conclude that the development would have a harmful effect on the living conditions of occupiers of Nos. 355 and 363A Commercial Road through an overbearing effect on outlook, together with a harmful loss of daylight to the second floor window of No 363A. The proposal would, therefore, conflict with Policy DM25 of the MDD in so far as it seeks to prevent an unacceptable increase in the sense of enclosure and ensure adequate levels of daylight for occupants of surrounding properties. The policy is consistent with the Framework.

Living environment – future residents

23. It is common ground that the balance of housing types would be acceptable. The internal floorspace of each flat would also satisfy the minimum requirements within the nationally described space standard, as adopted by the London Plan, aside from Unit 4 which would have a marginal deficit if including a bathroom rather than a shower room. However, the Council have expressed concern with respect to the effect of the development on the existing daylight and outlook from existing flats which are located at the first and second floor of Nos. 357 and 359.
24. The Daylight, Sunlight and Overshadowing Report does not undertake a specific assessment relating to Units 1A, 2A and 3A within Nos. 357 and 359 in terms of the effect of the extensions on existing daylight and overshadowing. In this regard, bedroom 2 of both Units 1A and 2A, would have an enclosed outlook onto a small internal terrace at first floor level. In addition, Unit 3A at second floor level has a study which is of sufficient size to accommodate a bedroom that would have an outlook directly onto and in close proximity to the second floor of the rear extension. Taking account of those close relationships of habitable windows and built form, I consider that the limited outlook and provision of daylight to bedrooms 2 of Units 1A and 2A and the potential bedroom of Unit 3 located on the north elevation would have a detrimental impact on the living conditions of their occupiers. In addition, there would also be harmful overlooking between habitable rooms of Units 1A and 2A. I therefore consider that, based on the evidence before me, the development would not provide for a satisfactory living environment for Units 1A, 2A and 3A within Nos. 357 and 359.
25. The Council have expressed additional concern with respect to the use of a mixed access at No 361 to a commercial store, cycle and waste storage, and to the residential accommodation on upper floors. However, it is evident that the main access to the existing upper floor accommodation currently shares similar access arrangements with a commercial store and a taxi business. Consequently, I do not consider that the proposal would result in a significant worsening of access arrangements or reduced security or legibility over ownership of space to an extent that would conflict with Policy DM23 of the MDD and Strategic Objective 9 of the CS. However, the absence of concern in this respect does not outweigh the harm otherwise identified.
26. I conclude that the proposed development would not provide a suitable living environment for the existing and future occupiers of Units 1A, 2A and 3A within Nos. 357 and 359, with particular regard to light, outlook and privacy. The proposal would, therefore, conflict with Policy DM25 of the MDD in so far as it seeks to prevent an unacceptable increase in the sense of enclosure, an

unacceptable loss of privacy and ensure adequate levels of daylight for existing and future residents. The policy is consistent with the Framework.

Other Matters

27. I am satisfied that Council concerns with respect to details of cycle parking and waste management arrangements could be overcome by imposition of conditions if the appeal were allowed. However, the absence of concern in this respect is a neutral factor.
28. The appeal site is located in an area with a PTAL rating of 6A which reflects excellent access to public transport provision. The proposal does not include provision for off street parking and in such circumstances the Council consider that a condition could be imposed to ensure the appellant enters into a planning obligation to secure 'car free' housing. However, the Government's Planning Practice Guidance (PPG)¹ makes it clear that it is rarely appropriate to require a planning obligation by way of condition. I am not satisfied that such a condition would meet the tests prescribed by the PPG and in the absence of a planning obligation accompanying this appeal, I cannot consider that there is a reasonable prospect that the development would be maintained as 'car free' housing. Nevertheless, as I intend to dismiss this appeal based on the harm identified relating to the main issues, I do not intend to pursue this matter any further.

Conclusion

29. I have considered the public benefits of the development in assessing the proposal against the main issues. I consider that the public benefits identified, when taken together, would not be sufficient to outweigh the harm to the character and appearance of the host building and the surrounding area, including the less than substantial harm to the significance of Commercial Road Conservation Area which I have identified. In addition I have also found that the proposal would cause significant harm to the living conditions of occupiers of neighbouring properties at Nos. 355 and 363A Commercial Road and would not provide a suitable living environment for the existing and future occupiers of Units 1A, 2A and 3A within Nos. 357 and 359.
30. For the reasons given above and taking all other matters into consideration, I conclude that this appeal should be dismissed.

Gareth Wildgoose

INSPECTOR

¹ Use of Planning Conditions, Paragraph: 010 Reference ID: 21a-010-20140306 Revision date 06 03 2014