

Appeal Decision

Site visit made on 13 September 2016

By Lynne Evans BA MA MRTPI MRICS

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

Decision date: 31 October 2016

Appeal Ref: APP/U5360/W/16/3143315
20 Andre Street, London E8 2AA

- 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 Mr Murat Yeter against the decision of the Council of the London Borough of Hackney
 - The application Ref: 2015/3750 dated 15 October 2015, was refused by notice dated 21 December 2015.
 - The development proposed is redevelopment of existing commercial building to form a four storey building to provide commercial space and five apartments with associated cycle parking and refuse storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the appeal process the Council adopted its Site Allocations Plan. I have therefore offered the Appellant and the Council the opportunity to submit any further representations in relation to the relevance of this now adopted Plan to the appeal before me. A response was received only from the Council to confirm that it had no further comments to make. I shall therefore make no further reference to this Plan in my decision.

Main Issues

3. The main issues in this appeal are:
 - a) The effect of the proposal on the provision of employment floorspace;
 - b) The effect of the proposal on the future health of existing trees adjoining the site, and
 - c) The effect of the proposal on the living conditions of adjoining residents in Amhurst Road, with particular regard to loss of outlook and loss of light.

Reasons

Issue a) Employment Floorspace

4. The appeal site comprises a two storey building and part covered and part open yard in use as a vehicle repair business on the south-western side of Andre Street, close to the junction of Andre Street with Amhurst Road. The proposal would replace the existing building, with a mixed use development over four floors, with just under 300 sqm of commercial floorspace on the ground and part first floor and with just under 400 sq m of residential floorspace in five flats on the balance of the first floor and above. The Appellant has set out that the site as existing has in the order of just under 260 sqm of commercial floorspace.
5. There are a mix of employment uses in the immediate vicinity of the appeal site and in the railway arches on the opposite side of Andre Street, together with a range of newer developments some of which are still under construction, further to the north. I am advised that these are mixed use, residential led developments. The properties in Amhurst Road which back onto the site are in residential use.
6. The site falls within a Priority Employment Area (PEA) where Policies CS17 and CS18 of the Council's adopted Core Strategy 2010 (Core Strategy) set out that business, and in certain locations, hotels and non-residential institutions will be the preferred uses (Policy CS17) with a general presumption in favour of retaining employment land across the Borough (Policy CS18). The Council's Development Management Local Plan (DM Local Plan) is more recently adopted in July 2015; however, it had been adopted prior to the submission of the application the subject of this appeal. Policy DM17 sets out more detailed guidance on Development Proposals in PEAs and sets out that B1, B2 and B8 are appropriate uses and C1, C3 and D1 uses are considered acceptable subject to criteria, including first, that they are part of an employment led mixed use development where the commercial use is the primary use and secondly, that the other uses would not compromise the functioning of the PEA. The Policy goes on to state that in exceptional circumstances and where there are strong planning reasons, the amount of C1 and C3 floorspace may exceed the commercial floorspace if meeting the second criterion of the policy.
7. The proposed employment floorspace would represent an increase over the existing employment floorspace on the site but would not be the primary use on the site measured in floorspace terms, as the residential content would exceed the employment floorspace in the approximate ratio of 60:40 (57.5% residential).
8. However, there is very limited evidence provided, including no marketing evidence, and certainly none that would enable me to conclude that there are exceptional circumstances or strong planning reasons as to why, in floorspace terms, a residential led rather than employment led scheme would be acceptable and why the commercial floorspace could not be increased. I agree that the redevelopment would offer modern flexible commercial space and potentially the opportunity for more jobs to be created than as existing, but this does not, in my view, provide a justification for the amount of floorspace provided and the ratio of commercial to residential floorspace. I have also

taken into account the earlier permissions granted on nearby sites as well as an Employment Study undertaken in 2010, but this proposal must be assessed on the basis of the adopted planning policies now in force, unless material considerations indicate otherwise. I note that an increase in commercial floorspace would result in the loss of some of the residential space but in the PEA the development plan policies prioritise employment space over residential uses.

9. I am not therefore satisfied on the information before me that there are exceptional circumstances or strong planning reasons to justify a residential led rather than employment led scheme in this case. As a result, I conclude that the proposal would result in a detrimental impact on the provision of employment floorspace to meet the employment needs of the Borough. Such harm would conflict with the Framework and in particular Section 1 relating to Building a Strong, Competitive Economy as well as Policies CS17 and CS18 of the Core Strategy, Policies DM14, DM15 and DM17 of the DM Local Plan and Policy 4.1 of the London Plan, all of which seek to support a strong and vibrant economy.

Issue b) Existing Trees

10. There are a number of trees immediately adjoining the south-western boundary of the site, in the gardens of properties in Amhurst Road. I agree with the findings of the Appellant's Tree Survey by OMC Associates dated 10 December 2015 that two of the trees, a lime to the immediate rear of the appeal site and a sycamore to the immediate rear of the adjoining unit at No 18 *are fine mature trees of significant landscape amenity because of their size and prominence*. There are, in addition, smaller trees to the immediate rear of the appeal site in the gardens of the properties in Amhurst Road, which whilst not of individual significance, contribute to the visual amenity of the immediate local area, in an otherwise densely built up urban landscape.
11. The existing buildings extend to the rear of the site as would the proposed redevelopment at ground floor level. The Appellant's tree report concludes that the development can be carried out from an arboricultural perspective but in strict compliance with a detailed BS 5387 arboricultural methodology with respect to excavation and foundation design, appropriate tree surgery and tree/ground protection, although it raises some concern with respect to T4. The body of the report expands on the concerns about the impact of the proposed development, particularly during construction, on the lime tree. Section 4.2 states that it must be anticipated that some damage might occur that may be destabilising to that tree.
12. I agree with the Council that the conclusions in the submitted tree report do not offer confidence that the development could proceed without harm to these trees, including to the lime tree. In the absence of a more rigorous assessment and detailed report, I am not satisfied that the development would safeguard the future health of the existing trees adjoining the site, which contribute positively to the visual amenity of the area. This would conflict with Policy 7.21 of the London Plan and Policy DM35 of the DM Local Plan, both of which seek to retain trees of amenity value.

13. Given my conclusion, I am not satisfied that the Appellant's suggested approach to address this matter through the imposition of a condition in relation to tree retention and protection measures during construction would overcome the harm I have found.

Issue c) Neighbours' Living Conditions

14. The proposed development would back onto the rear gardens serving residential properties in Amhurst Road, and I understand that these properties are divided into flats. I recognise that in a dense urban location such as the appeal site and the immediate vicinity, the ideal separation distances between buildings cannot always be achieved. Nonetheless, and taking the proposed set back of the upper floors over the ground floor of the proposed building into account, given the separation distances which would be achieved, I consider that the height and massing of the proposed building, and relationship with the buildings in Amhurst Road would be overbearing particularly in terms of the outlook from windows serving habitable rooms at the lower levels of properties in Amhurst Road, as well as from in rear gardens. This would harm the living conditions of these neighbouring residents.
15. I have taken into account the permitted schemes along Andre Street further to the north-west of the appeal site. However, given the street pattern and layout, there are greater distances between these permitted developments and the properties in Amhurst Road, compared with the separation distances which would be achieved in the appeal scheme and its neighbouring residential properties in Amhurst Road. Furthermore the submitted plans by the Appellant show the form of some of these other schemes, including stepped rear elevations, thus increasing the separation distances with the properties in Amhurst Road at the upper levels of the new buildings. I also noted this arrangement at my site visit.
16. Given the proposed separation distances and the height of the proposed new building, I also consider that there would also be a material loss of daylight to some of the windows and rear rooms of the properties in Amhurst Road, particularly on the lower floors. The submitted section from the Appellant (unnumbered) does not persuade me to a different conclusion. On the basis of the very limited information before me, I am unable to reach the same conclusion put forward by the Appellant that the existing trees and planting in the rear gardens of properties in Amhurst Road result in the same level of impact in terms of loss of light, compared with the impact that would result from the solid form of built development as proposed.
17. I therefore conclude that the proposed development would harm the living conditions of the neighbours in Amhurst Road, with particular regard to overbearing impact and loss of outlook as well as loss of light. This would conflict with one of the Core Principles of the Framework as well as Policies 7.4 and 7.6 of the London Plan, Policy CS24 of the Core Strategy and Policies DM1 and DM2 of the DM Local Plan, all of which amongst other things seek to protect the living conditions of existing and future occupiers.
18. I agree with the Council, that were no other matters of concern, and planning permission were to be granted a revised approach to the fenestration on the rear elevation would overcome concerns relating to overlooking and loss of

privacy for the neighbours in Amhurst Road. However, as this would not address the harm I have concluded under this issue, there is no need for me to address this matter further.

Other Considerations and Conclusion

19. I agree with the Appellant that the opportunity to provide more housing is a key objective of government policy as well as for the Mayor as set out in the London Plan and for the Council as set out in its development plan policies. The proposals would offer an additional five flats in a generally accessible location with access to services and facilities with a choice of means of transport.
20. However, these findings do not outweigh the conclusions I have drawn under each of my main issues. This harm would conflict with the Framework and development plan read as a whole. The proposal is not therefore sustainable development for which there is a presumption in favour.
21. For the reasons given above and having regard to all other matters raised, including in representations, I conclude that the appeal should be dismissed.

L J Evans

INSPECTOR