

## Appeal Decision

Site visit made on 8 November 2016

**by Mr J P Sargent BA(Hons) MA MRTPI**

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

**Decision date: 14 November 2016**

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**Appeal Ref: APP/U5360/C/16/3146842**

**124-136 Morning Lane, London E9 6LH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr S Bookatz of CBM against an enforcement notice issued by the Council of the London Borough of Hackney.
  - The notice was issued on 24 February 2016.
  - The breach of planning control as alleged in the notice is the erection of a 4<sup>th</sup> floor roof extension.
  - The requirements of the notice are
    - i) Remove the unauthorised 4<sup>th</sup> floor roof extension in its entirety;
    - ii) Make good all damage to the Property resulting from the removal of the unauthorised works and restore the relevant parts of the Property to its previous roof configuration;
    - iii) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) & (g) of the Act as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended is also to be considered.
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### Decision

1. The appeal is allowed on ground (g), and the enforcement notice is varied by the deletion of 3 months and the substitution of 6 months as the period for compliance. Subject to this variation the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.

### Costs application

2. On the day of the site visit the Council submitted a costs application relating to the substantive nature of the Appellant's case. However, this was a late application as it fell outside the timings for such submissions given in the *Planning Practice Guidance*. Good reason was not offered as to why this application was submitted late, and so it has not been accepted for consideration.

### Ground (a) appeal and deemed planning application

#### **Main Issue**

3. The main issue with this case is the effect of the development on the character and appearance of the area.
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## Reasons

4. This appeal concerns a modern apartment block that fronts Morning Lane between Stevens Avenue and Homerton Terrace. It is also visible from Ram Place and Meeting Field Path, which are 2 alleys that run from the west side of Homerton Terrace, though in the case of Meeting Field Path these views are confined to the area near its junction with Ram Place. The block itself is 3 storeys high with a mansard, and overall it has a relatively unified appearance and form. Around the site are buildings of a mix of ages, styles and scales.
5. The unauthorised extension is on the flat roof of the mansard towards the west end of the building, and has a floor area of some 22sqm. Its walls are in a cladding that is similar in colour to the slopes of the mansard roof and it provides kitchen and utility facilities for one of the units in the block.
6. In March 2016 an appeal against the refusal of planning permission for these works was dismissed (the previous decision<sup>1</sup>). In that decision it said

*'whilst the roof extension is clad in dark grey horizontal cladding to match the colour of the existing mansard roof, its size, height, form and position means that it is clearly visible from Homerton Terrace, Meeting Field Path and Ram Place. When viewed from these locations the roof extension appears as an awkward and incongruous feature which jars with the existing mansard roof. It is out of keeping and incompatible with the host building and is harmful to its appearance. Though I note that the roof extension only covers a relatively small part of the roof, this does not lessen the adverse impact of the development.'*

*The prominent position of the building also means that the roof extension has an adverse effect on the character and appearance of the surrounding area'.*

I concur with these views and so find that, because of its poor visual relationship to the block, the works cause unacceptable harm to the building and to the surroundings.

7. The Appellant though contended that there had been material changes in circumstance since the previous decision was issued, namely the adoption of the *City Fringe Opportunity Area Planning Framework* (the OAPF) and the presence of various new developments nearby.
8. The OAPF is guidance supplementing the *London Plan* and states that along Morning Lane active frontages and *'buildings which are slightly higher than contextual height'* should be encouraged. However, the OAPF was adopted in December 2015 and so it pre-dates the previous decision even though it was not cited in that document. Moreover, the works before me have no bearing on whether the frontage is active or not, and to my mind the encouragement for higher buildings does not justify putting aside concerns about the quality of works.
9. With regard to the new developments nearby, I assume the Appellant is referring to the blocks a little to the west on the opposite side of Morning Lane. These though are not appreciably taller than the buildings around or the appeal

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<sup>1</sup> Appeal APP/U5360/W/15/3134554 dated 1 March 2016

site, and sit in a different context to the Appellant's block, on a narrow strip adjacent to the elevated railway. I am unaware as to the state of those buildings when the inspection associated with the previous decision was made in January 2016, but as both are now completed and one is occupied it is fair to assume their construction was well-advanced and so they would have been taken into account to some degree.

10. In any event, even if these 2 considerations can be seen to justify developments of a greater height being accepted, my concerns and those in the previous decision are not specifically about how tall No 124-136 now is, but rather the discordant and jarring manner in which the extension sits on top of a building that otherwise has a generally unified and cohesive form.
11. In coming to this view I note the extension forms part of a flat. However, it has not been said that removing this element would unreasonably harm the living conditions or expectations of residents in the affected unit and so that is not a matter to which I have given significant weight.
12. Accordingly I conclude the development detracts unacceptably from the character and appearance of the area, thereby conflicting with Policy 24 in the *Hackney Local Development Framework Core Strategy*, Policy DM1 in the *Hackney Development Management Local Plan*, Policies 7.4 and 7.6 in the *London Plan* and the emphasis on good design in the *National Planning Policy Framework*, and the provisions of the OAPF or other material considerations do not outweigh this harm. The ground (a) appeal is therefore dismissed and planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.

### **Ground (g) appeal**

13. The Appellant said that the period for compliance should be lengthened to 6 months so as to allow builders to be secured and the works to be undertaken. The Council accepted this and I consider the Appellant's position to be reasonable.
14. Accordingly the appeal under ground (g) is allowed.

*J P Sargent*

INSPECTOR