
Appeal Decision

Site visit made on 15 November 2016

by Alexander Walker MPlan MRTPI

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

Decision date: 16 December 2016

Appeal Ref: APP/E5900/W/16/3154690

199 East Ferry Road, Tower Hamlets, London E14 3BB

- 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 Ms Alexandra Liddell against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/15/02991, dated 22 October 2015, was refused by notice dated 23 March 2016.
 - The development proposed is the demolition of 2 existing dwelling houses and construction of 5 dwelling houses, removal of some existing trees on site and construction of bike store and composting facility.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application form refers to the appellant as 'Ms Alexandra Lidell'. However, as confirmed in the appeal submission, this should read 'Ms Alexandra Liddell', which is reflected in my banner heading above.

Preliminary Matter

3. Following the Council's determination of the application the appellant has undertaken a Daylight and Sunlight Study carried out by Right of Light Consulting, dated 10 May 2016; a Bat Survey undertaken by Arbtech, dated 4 May 2016; and, a Flood Risk Assessment, undertaken by UK Flood Risk, dated 20 May 2016, which form part of the appellant's appeal submission. I do not find that these documents raise any new issues or change the substance of the proposal but merely seek to address the concerns raised by the Council in their decision notice. The Council has had the opportunity to consider these documents and has provided comments on them. Having regard to the principles established in the 'Wheatcroft' judgement¹ I do not find that any parties would be prejudiced by my consideration of their content. Therefore, I have determined the appeal taking into account the submitted documents.

Main Issues

4. The main issues in this appeal are as follows:
 - whether the proposal preserves or enhances the character or appearance of the Chapel House Conservation Area (CA);

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982]

- whether the proposal would provide adequate living conditions for future occupants, with particular regard to outlook, privacy, daylight and sunlight;
- the effect of the development on protected species; and
- whether or not the proposal would provide a suitable site for housing, having particular regard to its location within Flood Zone 3.

Reasons

Chapel House Conservation Area

5. The Chapel House Conservation Area Character Appraisal and Management Guidelines (adopted 2007) (CAMG) describes the area as comprising a mix of mid 19th century housing and traditional terraces. The area is characterised by its 'Garden City' style of residential development with properties grouped on curved roads and set back from the highway. Properties are constructed of traditional materials and simple detailing which forms part of the special character of the CA. The CAMG describes the original uniform scale and layout as being 'critical' to the preservation of the character of the CA. Small groups of cottages are presented as a separate block, set beneath a single roof and their uniform rooflines contribute to the CA's character. Roof heights are generally low across the area, with most properties being no more than two-storeys in height
6. The proposed dwellings would be two-storey in height with accommodation in the roof space served by roof lights to the front and dormer windows to the rear. The height of the ridgelines and eaves would be similar to the neighbouring properties in the street, notably Nos 201 and 203 East Ferry Road. However, the mansard shape of the roof, whilst maximising accommodation in the roof space, would introduce an incongruous feature into the area, which is typified by traditional pitched roofs. Furthermore, whilst parapets are a feature in the CA, the elevations of the dwellings have been informed by the simple design of the early 20th century terraces which do not have such features. As a result, I find that the dwellings would appear as an uncomfortable pastiche of existing house styles.
7. The terraces would continue the uniform building line established by existing properties in the street. However, the proposed introduction of the dwelling to the rear in what would typically be a garden area would be in marked contrast to the prevailing pattern of development in the area which is characterised by properties having frontages which embrace the street rather than hide away from it and have generous gardens to the rear. Therefore the dwelling to the rear would fail to respect the existing pattern of development and would appear incongruous.
8. Overall, I find that the incongruous roof design and introduction of a dwelling behind the street frontage would fail to preserve the character and appearance of the CA. Paragraph 134 of the National Planning Policy Framework (the Framework) confirms that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use. Whilst the harm to the significance of the CA would be less than substantial, the public benefits of the proposal, including the provision of additional housing, would not outweigh this harm.

9. I find therefore that the first floor rear extension would fail to preserve or enhance the character or appearance of the CA. As such, it would be contrary to Policies SP10 of the London Borough of Tower Hamlets Core Strategy Development Plan Document (CS) 2025 and Policies DM24 and DM27 of the London Borough of Tower Hamlets Managing Development Document Development Plan Document (DPD) 2013, which seek to ensure that development is sensitive to and enhances the local character and protects and enhances heritage assets, including CAs. Furthermore, it would fail to comply with Policies 7.4 and 7.8 of the London Plan 2015, which seek to ensure that development is informed by the surrounding historic environment and conserves the significance of heritage assets.

Living Conditions

10. The rear elevations of Houses A and B would be approximately 7m distance from the side elevation of House E. Although the ground floor living spaces are dual aspect, the outlook to the front of Houses A and B are of the public highway. Due to the depth of the properties the front windows would not provide a significant degree of outlook to serve the living area of the room as opposed to the kitchen. As a result of its proximity, the side gable elevation of House E would rise substantially above the rear boundary fence of Houses A and B. As a result, it would dominate the outlook from the rear windows and patio doors to such an extent that it would result in an unacceptable sense of enclosure that would significantly harm the living conditions of the occupants of these properties.
11. The rear garden of House E would be shallow and as a result of the boundary fence and trees would not provide much of an outlook from the ground floor rear windows. However, the ground floor rooms are also dual aspect, although not as deep as the other dwellings, with large windows to the front allowing views into the front garden. Therefore, when taken as a whole, the overall outlook from the ground floor rooms would be adequate. In respect of the outlook from the upper floors, I do not find overlooking public open space to be an unacceptable outlook. This is commonplace with many properties and would not result in a sense of enclosure.
12. On the issue of outlook I, therefore, consider that the proposal would not provide an adequate outlook for the future occupants of Houses A and B.
13. The west elevation and front and rear gardens of House E would abut the rear boundaries with Houses A and B. As a result of their proximity, significant views of the rear garden of House E would be possible from the upper floor rear windows of Houses A and B. Consequently, this would have a significantly detrimental effect on the availability of outdoor private space available for the occupants of House E. I note that the trees may limit views out of upper floor windows to some extent. However, I do not find that they would sufficiently so to mitigate the harmful overlooking effect. The appellant states that this level of overlooking is similar in nature to any house on a suburban street. However, I have not been provided with any examples of where this occurs to draw any direct comparison with the proposal before me. In any event I have considered the proposal based on its own merits. On the issue of privacy I, therefore, consider that the proposal would not provide adequate private amenity space for the future occupants of House E.

14. The Daylight and Sunlight Study (DSS) which accompanies the appeal submission is based on the numerical tests laid down in the Building Research Establishment (BRE) guide, 'Site Layout Planning for Daylight and Sunlight: a good practice guide' by PJ Littlefair, 2011. It concludes that all the rooms would surpass the BRE Average Daylight Factor (ADF) targets and would generally have excellent access to daylight over a significant part of the working plane.
15. The Council contends that there is a discrepancy in the plans that were assessed as part of the DSS and those that form the appeal submission, in particular the window and door configuration on the ground floor plan does not correspond with the rear elevation drawing. Whilst I note the discrepancy, which was also present on the planning application submission drawings, there is no indication that they would have any significant adverse effect on the results of the DSS.
16. The Council also points out that the ADF calculations have been carried out incorrectly. In accordance with the 'Site Layout Planning for Daylight and Sunlight: a good practice guide', if part of the window is below the height of the working plane, which is 0.85m above the floor in housing, this portion should be treated as a separate window. The Council states that a number of windows that are above 0.85m have been treated as separate windows. Whilst they have not indicated which windows, I note that some have both lower and upper calculations. Many of these are the patio doors and dormer windows and therefore part of them would likely be below 0.85m. However, the remaining windows that have a lower and upper calculation have an ADF value of 0.0% for the lower calculation. Therefore, whilst it is not clear why they have been considered as a separate window, I do not find that it has a material effect on the overall ADF calculations.
17. Furthermore, Appendix 2 of the DSS identifies the Annual Probable Sunlight Hours (APSH) that the windows serving the living/dining/kitchen areas would receive. Whilst there is no explanation within the DSS regarding the BRE Guidelines target for APSH, in my experience the results of the calculations indicate that adequate sunlight would serve these rooms.
18. The DSS has not had regard to the private amenity space of the dwellings. The terraced dwellings would have east facing rear gardens. The west elevation of House E would abut the rear boundary fence of Houses A and B. Furthermore, existing trees are on the northern boundary of House A. Whilst these gardens may not receive as much sunlight and daylight as those of Houses C and D, I do not find that it would significantly harm the usability of this outdoor amenity space.
19. The rear garden of House E is north facing and shallow in depth. Due to its narrow depth, the boundary fence and the trees lining the boundary, this area would likely be in the shade for much of the time. However, to the front of the property would be a large, south facing outdoor amenity space. Although there would be trees on its eastern boundary it would nevertheless likely receive a significant level of direct sunlight throughout the day. On the issue of daylight and sunlight I, therefore, consider that the proposal would not have an unacceptable effect on the future occupants of the dwellings.
20. Whilst I have found that the proposal would not result in any significant harm in respect of daylight and sunlight, this does not outweigh the harm in respect

of outlook and privacy. I find therefore that the proposal would not provide adequate living conditions for future occupants, with regard to outlook and privacy. As such, it would fail to comply with Policy SP10 of the CS, which seeks to ensure that development protects amenity and promotes well-being. In addition, it would fail to comply with Policies DM4 and DM25 of the DPD, which seek to ensure that development provides adequate amenity space and does not enable an unreasonable level of overlooking, unacceptable increase in the sense of enclosure or result in the unacceptable loss of outlook.

Protected Species

21. The Bat Survey which accompanies the appeal submission has been informed by the 'Bat Conservation Trust Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edition)' (Collins 2016). Paragraph 2.2 of the survey states that 'All buildings/trees that will be impacted by the project proposals (the survey area) were assessed for their habitat value in terms of supporting roosting bats'. The Council states that there is some ambiguity as to what exactly was assessed. However, it seems clear to me that the survey was sufficiently thorough, including an internal inspection whereby particular attention was paid to the floor and flat surfaces, window shutters and frames, lintels above doors and windows, and carried out a detailed search of features within the roof space. Moreover, there is nothing to suggest that the whole of the outside of the building was not sufficiently inspected.
22. Although the loft space of No 199 was not inspected, it is reasonable to conclude that its construction would be similar to No 199a. Therefore, I accept that the likelihood of bats using the building for roosting would be similarly negligible.
23. Notwithstanding the above, the study acknowledges that a number of the trees would be removed yet there is no finding that they do not have the potential for bat roosts. This is particularly important as the adjacent Millwall Park is known to be used by foraging bats. It is also of note that bat data records from the London Bat Group have not been included in the study.
24. Whilst there is no indication of bat roosts on the site, the study finds that birds may nest within the building. The Council makes a compelling argument that if birds can access the building, why cannot bats. This is particularly important as the loft space in No 199 was not inspected.
25. Where there is a reasonable likelihood of a species being present, it is essential that the presence of protected species, and the extent to which they would be affected by the development, is established prior to planning permission being granted. Overall, I am not satisfied that the Bat Study sufficiently assesses the potential presence of bats and therefore the proposal could have a significantly harmful effect on them.
26. I find therefore that in the absence of suitable Bat Study it is not possible to ascertain the effect the proposal would have on the protected species. Therefore, the proposal would fail to comply with Policy DM11 of the DPD, which seeks to ensure that existing elements of biodiversity value should be protected or replaced within the development.

Flood Risk

27. The appellant's Flood Risk Assessment (FRA) identifies that the appeal site falls within Flood Zone 3 as defined by the Environment Agency (EA) mapping. The FRA states that the proposal is categorised as 'less vulnerable' development in accordance with table 2 of the National Planning Practice Guidance (PPG). However, table 2 clearly identifies 'buildings used for dwelling houses' as 'more vulnerable' development.
28. Paragraph 101 of the National Planning Policy Framework (the Framework) requires the application of a Sequential Test in decision taking in order to steer new development to areas with the lowest probability of flooding. In particular it states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Paragraph 102 goes on to say that if, following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if appropriate. A more vulnerable use such as a dwelling should only be permitted in Flood Zone 3 if the Exception Test is passed. To pass the Exception Test it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk and a site specific flood risk assessment demonstrates that the development will be safe for its lifetime taking account of the vulnerability of its users.
29. The appellant has not undertaken a Sequential Test and argues that Cubitt Town, within which the site falls, was the subject of a Sequential Test as part of the plan preparation stage of the CS. Notwithstanding the Core Strategy pre-dating the publication of the Framework, the PPG² advises when the Sequential Test does not need to be applied in the determination of planning applications. This includes individual developments on sites which have been allocated in development plans through the Sequential Test; applications for minor development or change of use; and, development proposals in Flood Zone 1, unless the Strategic Flood Risk Assessment for the area, or other more recent information, indicates there may be flooding issues now or in the future. Whilst Cubitt Town would appear to have been the subject of a Sequential Test, the appeal site is not an allocated site in the development plan. I find therefore that a Sequential Test is required.
30. It is the responsibility of the Council to assess the Sequential Test, having regard to the information provided by the appellant in their FRA. In this case the Council states that there are alternate sites that are not located in the flood zone which would be suitable for the proposed type of development, particularly in the north of the Borough, although I have not been presented with evidence of these sites. The PPG advises that the area to apply the Sequential Test across is defined by local circumstances and such an area may be identified from Local Plan policies³. The Core Strategy identifies a requirement of 4,190 additional homes to be located within Cubitt Town. 3,831 of these would be accommodated on two sites, which were included in the Strategic Flood Risk Assessment. Therefore the remaining units would be delivered through windfall sites. Based on this, the appellant states that the Sequential Test need only cover Cubitt Town and as the whole of the town falls

² Paragraph: 033 Reference ID: 7-033-20140306

³ Paragraph: 033, Reference ID: 7-033-20140306

within Flood Zone 3 a Sequential Test would be unnecessary as there could not be any other sites at a lower risk of flooding. However, there is no evidence before me of the extent of Cubitt Town or any substantive evidence identifying it as being entirely within Flood Zone 3. Therefore, whilst I accept that a Sequential Test may not be Borough wide, there is insufficient evidence before me to demonstrate that there are no alternative sites at lower risk of flooding. As the proposal fails to satisfy the Sequential Test, there is no need to progress to the Exceptions Test.

31. I find therefore that the proposal would be contrary to Policy SP04 of the CS, which seeks to reduce the impact of flooding. In addition, it would also fail to comply with policy 5.12 of the London Plan 2015, which seeks to minimise flooding. Furthermore, it would fail to accord with the aim of the Framework of directing development away from areas of highest flood risk.

Conclusion

32. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR