

Appeal Decision

Site visit made on 8 February 2017

by Nicholas Taylor BA(Hons) MRTPI

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

Decision date: 8th March 2017

Appeal Ref: APP/U5360/W/16/3163687

3 Broadway Market, London E8 4PH

- 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 Lawrence Patterson against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2016/0856, dated 9 March 2016, was refused by notice dated 27 May 2016.
 - The development proposed is 'extension and internal reconfiguration to the upper floor dwelling at 1A&1B Broadway Market Mews. Addition of a second floor to change the as-approved flat under Planning Approval 2013/2835 from a studio to a two-bed maisonette dwelling. The application does not affect the external appearance of the lower ground, ground or first floors and does not affect the accommodation to the lower-floor dwelling as approved under 2013/2835'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The appeal property is within the Broadway Market Conservation Area. Consequently, the main issues in this case are:
 - Whether the character or appearance of the conservation area would be preserved or enhanced; and
 - Whether the proposed development would have an acceptable effect on the living conditions of the occupiers of neighbouring dwellings, having regard to outlook, daylight and overlooking.

Reasons

Character and appearance of the conservation area

3. The Broadway Market Conservation Area includes the mixed commercial and residential street of Broadway Market, together with several other residential streets at the fringe of London Fields park. The appeal property is located close to the southern end of Broadway Market, close to the Regent's Canal. The two and three storey Victorian buildings lining this section of the street, although not statutorily listed, are identified by the Council as being of townscape merit and are, in general form, scale and type, characteristic of the core of the conservation area, contributing thereby to its significance as a heritage asset.
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4. The appeal site comprises an existing two storey (above the ground) extension, with access on to Broadway Market Mews, to the rear of 3 Broadway Market. The existing extension was part of a development to No. 3, approved by the Council in 2014, which also added roof-level accommodation. Consequently, the main building fronting Broadway Market now consists of three storeys of residential accommodation above a retail use on the ground and basement levels.
5. The appeal proposal would add a further floor on top of the existing Mews extension building, giving the appearance of a box-like addition and raising its height above the existing parapet of the flat roof by a further 2 metres, so that it would equate in height to the valley of the butterfly roof on the main building. Although there are at present a number of other similarly positioned extensions to the rear of the terrace, they are mostly no more than two storeys high above ground, notwithstanding hipped roofs in some cases. Given the position in this case, fairly close to the back of the main terrace but slightly separated from it, the proposed increase in height would create a perception of an overly tall building, neither a subservient extension of the terrace nor completely independent of it. Such an effect would be at considerable odds with the characteristic form of the terrace and the mostly relatively smaller scale extensions and additions to its rear.
6. The jarring effect would also be exacerbated by the position of the scheme just off the end of the terrace; whereas a building with significant bulk and presence might be appropriate on a side street frontage, as in the even larger existing development at Nos. 11 – 12 at the opposite end of the mews terrace. I note also the developments to the rear of Nos. 10 and 14 Broadway Market; but none of those referred to by the appellant shares the precise locational and contextual characteristics of the current case. Moreover, the appeal scheme's impact on the conservation area would be increased by its visibility from on and around the Cat and Mutton Bridge over the canal.
7. I am not overly concerned about the detailed design, fenestration or materials of the proposal, which would help to tone down its visual impact and for which, I accept, precedents exist in east London. However, the overall harm arising from the scale and massing of the proposal is not outweighed by any intrinsic quality in detailed design.
8. All in all, I conclude, therefore, that the proposed development would fail to preserve or enhance the character or appearance of the conservation area. Consequently, it would not comply with policies 24 and 25 of the *Hackney Local Development Framework Core Strategy* (CS), policies DM1 or DM28 of the *Hackney Development Management Local Plan* (DMLP) or policies 7.4, 7.6 or 7.8 of the London Plan (LP). These policies, in combination, seek to achieve good design and preserve heritage assets; in this case the conservation area.
9. It would not satisfy the *National Planning Policy Framework* (the Framework) which, at paragraph 132, requires great weight to be given to the conservation of heritage assets. Moreover, there would be conflict with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires the decision maker to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
10. The harm to the heritage asset would be serious but less than substantial, within the meaning of paragraphs 132 – 134 of the Framework. Paragraph 134

requires that less than substantial harm should be weighed against the public benefits of the proposal. In this case, the improvement in the size and accommodation of one of the proposed residential units, compared with the extant scheme, would not outweigh the harm to the designated heritage asset.

Living conditions

11. The Council's report describes the proposed development's distance from habitable room windows at the rear of existing No. 3 as less than 4 metres, and from windows of neighbouring dwellings "90 degrees due north of the site" as less than 10 metres. The submitted drawings and my own observations on site bear out the close proximity in this case.
12. Given that relationship, I consider that the combined height of the existing development with the appeal scheme would have a significant overbearing effect on the outlook, increasing the sense of enclosure, from the windows of habitable rooms on the first and second floors at the rear of Nos. 3 and 5 and, to a lesser extent, 7 Broadway Market. I note also the concerns expressed by third parties in that regard. The effect on the outlook from the rear of 1 Broadway Market would not be so severe due to its open aspect over the Regent's Canal.
13. The appellant has provided copies of letters, dated 23 May 2016, from Party Wall and Rights to Light Consultants. Both letters refer to reports, one dated 9 November 2012 and the other dated 18 June 2015. I have not been provided with either of those reports. One letter states that "obstruction to windows at neighbouring properties ... will be no greater than the previous [proposed development] and potentially slightly less", and, therefore, BRE¹ compliant. Notwithstanding the lack of detailed evidence before me, I have difficulty reconciling this statement with the fact that the current appeal proposal is larger in size than the previously approved scheme. However, even if the current proposal would comply with BRE guidelines, it would not alter my planning judgement regarding its effect on outlook from neighbouring dwellings in this instance.
14. The likely impact of the proposal on daylight within neighbouring dwellings, which is also of concern to the Council, is harder to judge. Whilst the appellant's consultants' second letter states that it is "highly unlikely there would be any actionable injuries to rights of light", that does not necessarily mean that the impact would be acceptable in planning terms. It is possible that there would be material impact on sunlight reaching some of the habitable room windows of Nos. 5 and 7 Broadway Market, as they are located approximately to the north of the proposed development but that does not necessarily equate to an unacceptable loss of 'daylight', as such. I must conclude that the evidence is inconclusive on this matter.
15. The Council has not highlighted any potential impact on the existing flats in Orwell Court, immediately to the west of the proposed development, but a third party has expressed concern about overlooking. Given the wide angle between the west face of the proposed building and the south face of Orwell Court, direct overlooking between rooms would be unlikely to be problematic. Whilst existing and proposed balconies would be in fairly close proximity, I am not

¹ BRE: Building Research Establishment

convinced that it would amount to a degree of overlooking that would be unduly un-neighbourly.

16. To conclude on the second issue, therefore, whilst I am satisfied that the impact of the proposal in terms of overlooking of neighbours' dwellings would not be unduly harmful, I have been unable to conclude with certainty on the impact on daylight. The impact in terms of outlook from neighbouring dwellings would, however, cause significant and unacceptable harm to the occupiers' living conditions.
17. Accordingly, the proposal would conflict with Policy 24 of the CS, Policy DM2 of the DMLP and policies 7.4 and 7.6 of the LP. These policies share the common approach of seeking good design to, among other things, respect the living conditions of occupiers. The scheme would also conflict with one of the core planning principles² of the Framework, which is to always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

Conclusion

18. For the reasons set out above, the appeal should be dismissed.

Nicholas Taylor

INSPECTOR

² Set out in paragraph 17 of the Framework