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# Appeal Decision

Site visit made on 14 February 2017

**by Philip Lewis BA (Hons) MA MRTPI**

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

**Decision date: 14 March 2017**

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**Appeal Ref: APP/U5360/W/16/3161596**

**7-10 Bateman's Row, Hackney, London EC2A 3HH**

- 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 Martin Riches and David Shirley against the decision of the Council of the London Borough of Hackney.
  - The application Ref 2016/1352, dated 15 April 2016, was refused by notice dated 29 June 2016.
  - The development proposed is described as '*reconfiguration of office space and provision of six (6) residential units*'.
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## Decision

1. The appeal is dismissed.

## Procedural matter

2. The appellant has included with the appeal twelve amended plans<sup>1</sup> and has requested that, in the light of the Wheatcroft judgement<sup>2</sup>, they are considered as part of the appeal. The amendments to the scheme relate to the provision of a basement level to house the functional elements of the office use and a reduction in the overall height of the proposed scheme. The Wheatcroft judgement supports the consideration at appeal of a revised scheme which is substantially the same as that originally proposed. However, it is necessary to ensure that those who should have been consulted on the changed development are not deprived of an opportunity of consultation.
3. The appellant contends that the amended plans have been the subject of formal consultation via a further planning application and has stated that any adverse views of the amended scheme will be known prior to the consideration of the scheme before me. It is also contended that an appeal made in respect of the further application would be a waste of public money.
4. Whilst I note the amended scheme seeks to enhance office provision and to address the Council's concerns regarding the appearance of the building, I consider that the amended scheme is substantially different to that before me in that it includes a lower ground floor element and would be different in height. Furthermore, whilst the amended scheme may have been the subject of a separate planning application, that scheme and any responses made to it by the Council or by interested persons are not before me and I have no

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<sup>1</sup> 503A-PA.01 P1; 503A-PA.02 P1; 503A-PA.03 P1; 503A-PA.04 P1; 503A-PA.05 P1; 503A-PA.06 P1; 503A-PA.07 P1; 503A-PA.08 P1; 503A-PA.09 P1; 503A-PA.10 P1; 503A-PA.11 P1; 503A-PA.12 P1;

<sup>2</sup> Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

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evidence that all interested parties have been made aware of the revised scheme or the request that it be taken into consideration as part of the appeal. I am concerned therefore that the rights of interested parties would be prejudiced if I consider the amended drawings as part of the appeal and my decision is therefore based on the scheme determined by the Council.

## **Main Issues**

5. The main issues for the appeal are:

- Whether the proposed development would preserve or enhance the character or appearance of the South Shoreditch Conservation Area;
- The effect of the proposal on the provision of floorspace for employment;
- The effect of the proposed development on the living conditions of nearby residents with particular regard to privacy and/or enclosure; and
- Whether the proposal would provide an appropriate housing mix.

## **Reasons**

### *Character and appearance*

6. The appeal relates to 7-10 Bateman's Row, a two storey building in commercial office use. The building is situated within the South Shoreditch Conservation Area and I note that it is identified as being a building of townscape merit. The Conservation Area has a predominantly commercial character and has been greatly influenced by its associations with the furniture trades in the 19th and 20th centuries. There is some variety in the age, scale and design of buildings within the Conservation Area, evident in the area around the appeal building.
7. I saw at my site visit that the appeal building is modest in scale compared with its neighbours and has a decorative finish in yellow brick, with red and blue brick elements, and with cornices and pilasters. Internally, the building has cast iron columns with significant glazed elements to the rear lighting each floor. It is proposed that the building is redeveloped, with the addition of three storeys above the existing retained façade. The rear walls would be replaced in brick and the existing front opening altered and a new door open formed.
8. The addition of the new floors to the building would give rise to a significant change in its appearance. Whilst upper floor extensions are not uncommon in the area, such as on the adjoining 11-13 Batemans Row, the scale of the proposed development in relation to the original building is excessive giving rise to an overbearing and incongruous form of development that would overwhelm the host building. The proposed development would also give rise to loss of the internal fabric of the building, which although I note its removal may not require planning permission, is nevertheless a loss of historic character. Consequently, although the principal façade would be retained, the proposed development would have a harmful effect on the character and appearance of the host building which makes an important contribution to the Conservation Area.
9. I have considered the appellant's comments that the proposed development would provide significant improvements to Batemans Row, and views into and out of Curtain Road, particularly in respect of the adjacent 1-6 Batemans Row, which I understand has planning permission for additional floors to be added

and in respect of 16-20 Dereham Place. However whilst these buildings may have a stark appearance in the street scene, the harm which would result from the appeal scheme would not be outweighed by any improvements which may arise in terms of views of these buildings through the proposed increase in height of the appeal building.

10. I therefore find that the appeal proposal would give rise to harm to the Conservation Area and having found harm to the Conservation Area, I give it considerable importance and weight. Paragraph 131 of the National Planning Policy Framework (the Framework) states that in determining planning applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets. This is in line with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of development affecting conservation areas, which states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area. Paragraph 132 of the Framework sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the conservation of the asset.
11. Paragraph 126 of the Framework recognises that historic assets are an irreplaceable resource that local authorities should conserve in a manner appropriate to their significance. The harm found in this case would be less than substantial to the extensive Conservation Area as a whole and paragraph 134 of the Framework sets out that any harm, which is less than substantial, must be weighed against the public benefit of the proposal. Whilst the harm to an individual site may be less than substantial, the incremental and cumulative harm that could arise from similar proposals could adversely affect the Conservation Area and the heritage asset as a whole. As heritage assets are irreplaceable, any harm requires clear and convincing justification. I shall return to the public benefits of the proposal.
12. The proposal would not preserve or enhance the character or appearance of the South Shoreditch Conservation Area and conflicts with Policy 24 of the Hackney Local Development Framework Core Strategy 2010 (CS) which is concerned with design and includes that all development should seek to enrich and enhance Hackney's built environment and CS Policy 25, which includes that all development should make a positive contribution to the character of Hackney's historic and built environment.
13. The proposal also conflicts with Hackney Development Management Local Plan 2015 (DMLP) Policy DM1 which includes that all developments are required to be of high quality design and DM Policy 28 which is concerned with the Historic Environment and includes that development in conservations areas shall preserve or enhance the character and appearance of the area. Additionally, the proposal also conflicts with policies 7.4, 7.6 and 7.8 of the London Plan 2015 which are concerned with local character, architecture and heritage assets and archaeology respectively.

#### *Employment provision*

14. The appeal site is situated within a Priority Employment Area (PEA) where DMLP Policy DM 17 applies. The policy includes that within PEAs uses falling within Use Classes B1, B2 and B8 are considered to be appropriate uses, with dwelling houses acceptable as part of an employment led mixed use

development where commercial use is the primary use, in that the majority of floorspace should be for employment use.

15. DMLP Policy DM14 is concerned with the retention of employment land and floorspace and includes that it must be demonstrated that the maximum economically feasible amount of employment land and floorspace has been examined through the submission of marketing evidence. Loss of employment space will only be permitted where there is robust evidence that there is no demand for the existing floorspace, any new employment use provides a range of higher quality more flexible floorspace and it is demonstrated that there is a strong likelihood of new commercial floorspace being occupied through the submission of a detailed marketing strategy.
16. The appellants planning statement sets out that there would be a reduction in office floorspace from 331 to 314 square metres and provision of 409 square metres of residential floorspace. In this context, I do not consider that the appeal scheme is employment led or that the primary use of the resulting development would be commercial. Whilst I have taken into consideration the appellants comments that the existing building is poorly insulated, lacks modern servicing and that the redeveloped accommodation would be easier to let than the existing, it has not been demonstrated that the reduction in employment floorspace is justified or that maximum economically feasible amount of employment land and floorspace has been examined. Consequently, I consider that the appeal scheme would give rise to harm to the provision of employment land in the PEA.
17. The proposal conflicts therefore with DMLP Policies DM 14 and DM 17. The appeal scheme also conflicts with CS Policies 3, 16, 17 and 18 which are concerned with economic development, employment and employment land. Additionally the proposal conflicts with London Plan 2015 Policy 2.13 in that it does not support the strategic policy direction area and Policy 4.3 which is concerned with mixed use development and offices.

#### *Living conditions*

18. Opposite the appeal site, on the corner of Batemans Row and New Inn Street and across the narrow street, is situated a building housing a number of flats, which I understand from interested party correspondence to be 8-13 New Inn Street. Whilst I saw during my site visit that the lower windows in the building are in relatively close proximity to the office windows in the appeal building, I observed that the upper floor windows and terrace have a less enclosed outlooks over the roof of the appeal property and I understand that a number of these windows serve habitable rooms.
19. The upper three floors of the proposed development would be formed of flats with habitable room windows and terraces in close proximity to the flats opposite. Due to the limited separation distances involved, the proposed development would give rise to a significant loss of privacy for the occupants of the existing flats. The appeal scheme would also, due to its height and proximity to the flats opposite, give rise to a significant increase in a sense of enclosure for their occupiers.
20. Adjoining the appeal property is 11-13 Bateman's Row, a four storey property with flats on its upper 3 floors. I saw at my site visit that the upper floor flats are set back behind the front of the building and have front terraces and I

understand the property has terraces and windows to the rear. The proposed development would, due to the provision of a significant expanse of flank wall above and to the rear of the flats at Nos 11-13, give rise to significant adverse effects in terms of enclosure for their occupiers.

21. I have taken into account that the buildings on the street are already closely spaced and that they could be approached from much closer vantage points and that windows in the side elevation of the proposed building would be in obscure glass. I have also considered the findings of the appellants Daylight and Sunlight Study. However, I nevertheless find that the proposed development would have unacceptable effects on the living conditions of neighbouring occupiers in terms of privacy and enclosure.
22. The proposed development therefore conflicts with DMLP Policy DM1 which includes that all developments will be required to be of high quality design and ensure that proposals are not obtrusive in relation to adjacent buildings and DMLP Policy DM2 which is concerned with development and amenity including that development will not result in significant adverse impacts on the amenity of neighbours. The proposal also conflicts with CS Policy 24 which is concerned with design. Additionally, it conflicts with London Plan Policies 7.4 which includes that buildings provide a high quality design response and Policy 7.6 which includes that development should not cause unacceptable harm to the amenity of surrounding buildings.

#### *Housing mix*

23. DMLP Policy DM 22 is concerned with the provision of homes of different sizes and includes that all residential proposals should provide a mix of dwellings in according with the Council's preferred dwelling mix. The policy allows for variations to the size mix dependent upon site and area location and characteristics and scheme viability. The Councils preferred dwelling mix is for 33% of units to be 3 or more bed units.
24. The appellant has referred to DMLP Policy DM 23 which refers to a different dwelling mix may be required to enable development or as part of the refurbishment of a recognised heritage asset building in order to retain distinctive townscape character and the historic layout of a property. However, that policy is primarily concerned with conversions from houses to flats.
25. I have considered the comments regarding the floorplate of the building and that providing an additional 3 bedroom unit would reduce the number of 2 bed units. However, the appeal proposal nevertheless fails to provide an adequate mix of housing sizes and conflicts with DMLP Policy DM 23, London Plan Policy 3.8 which is concerned with housing choice and CS Policy 19 which includes that the Council will promote the provision of new family accommodation.

#### **Other matters**

26. I have taken into consideration the policies of the Framework and the development plan cited and that planning permission was granted in 2001 for the addition of 2 floors to the appeal building. However the previous permission predated the Framework and I have limited details of that scheme to consider.

### **Planning balance and conclusion**

27. The appeal proposal would provide 6 new dwellings which would be a public benefit to which I attach modest weight. Whilst it would also give rise to higher quality office accommodation, there would be a reduction in the total office floorspace provided and I find the proposal conflicts with the development plan in this regard. I have had regard to the comments concerning the Community Infrastructure Levy contribution which would address matters arising from the development and the New Homes Bonus.
28. The appeal proposal would therefore give rise to public benefits. However, I consider that they would not be sufficient to outweigh the great weight to be given to the conservation of the heritage asset.
29. In conclusion, I find that the appeal proposal would give rise to unacceptable harm to the character and appearance of the Conservation Area, to the provision of employment land, to the living conditions of neighbouring occupiers and would not provide the required mix of housing. Consequently, the appeal scheme is not a form of sustainable development for which the Framework has a presumption.
30. For the reasons given above and having considered all matters raised, I conclude that the appeal should be dismissed.

*Philip Lewis*

INSPECTOR