
Appeal Decision

Site visit made on 26 April 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 23 May 2017

Appeal Ref: APP/E5900/W/17/3167931

City and Central Cars, 323 Bethnal Green Road, London E2 6AH

- 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 Luca Bertali, Greenshore Developments Ltd against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/16/02828, dated 23 September 2016, was refused by notice dated 5 December 2016.
 - The development proposed is demolition of existing 2 storey building and replacement with 3 storey building and basement. Change of use from retail to mixed use retail and residential.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - The effect of the proposal on the living conditions of future occupiers with specific reference to daylight, sunlight, outlook, privacy and amenity space and the quality of the retail space.
 - The effect of the proposal on neighbouring occupiers including the users of the nearby health centre with specific reference to privacy and outlook.
 - The effect of the proposal on highway safety with specific reference to on-street parking and whether adequate provision would be made for cycle parking.

Reasons

Living conditions of future occupiers

3. The appeal site is a two-storey terraced property on the north side of Bethnal Green Road which has a retail unit on the ground floor and an office on the first floor, previously in use as a taxi hire office. The rear of the site is a back yard. To the north of the site is a two-storey building in use as a health centre. The surrounding area is characterised by commercial properties on the ground floor and a mix of uses above.
 4. The Council has raised concerns regarding the quality of the proposed retail floor space and its attractiveness to the market. However, the appellant has provided a report which confirms that the reconfigured floor space over the ground floor and basement would be in keeping with demand. In the absence of any evidence to the contrary, I consider that the proposal would provide retail accommodation of a sufficient size and quality.
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5. The two bedrooms and bathroom serving Unit 1 would be situated within the basement of the proposal with the living space above. The bedrooms would only be served by roof lights and the Council are concerned that they would not receive sufficient daylight or sunlight. A Daylight Sunlight Assessment has been submitted in support of the proposal which utilises three methodologies for the daylight assessment including Average Daylight Factor (ADF), No Sky Line (NSL) and Room Depth Criterion (RDC). The sunlight assessment utilised the Annual Probable Sunlight Hours (APSH) methodology.
6. The assessment identifies that the bedrooms would achieve slightly lower than the recommended NSL at 58% and 74% respectively. However, this is only one component of the assessment and in terms of ADF the bedrooms would achieve 2.3% above the recommended level for a bedroom of 1%. Consequently, I am satisfied that those bedrooms would receive sufficient light. However, the outlook from these rooms would, nevertheless, be very poor to the detriment of future occupiers.
7. The Internal Daylight Report (Report) has not been undertaken on the basis of the mirrored glass which is referred to in the amenity diagrams. The appellant clarifies that it has been undertaken on the basis of frosted glass. However, mirrored glass is likely to have lower transmission values than frosted glass due to its highly reflective nature and consequently, I have concerns regarding whether the rooms would receive sufficient light. The appellant has indicated that they are willing to accept a condition restricting the windows in question to frosted glass. As the Report has been undertaken on the basis of frosted glass and in light of my concerns regarding mirrored glass, I have determined the appeal on the basis of frosted glass. Frosted glass would overcome some of my concerns with regards to light as the transmission rate of the frosted glass would be similar to clear glass. However, in those rooms which only have one window this would result in poor outlook to the detriment of future occupiers.
8. A daylight/sunlight assessment has not been undertaken of Unit 2, as only those rooms most at risk were assessed. The living room/kitchen diner would be served by a large window and also roof lights and would, therefore, receive sufficient light. Bedroom 1 would also be served by a large window overlooking the health centre and would, therefore, receive sufficient light. Bedroom 2 would be served by a smaller window facing onto the courtyard. In light of the conclusions of the report that the basement accommodation would receive sufficient light, it is reasonable to expect this window would also receive sufficient light as it is not as obstructed.
9. Bedroom 2 of Unit 2 would face a window and door serving the hallway of unit 3. It is now proposed to use frosted glass in the window of bedroom 2 of unit 2 which may overcome potential overlooking issues. However, as this would be the only window serving this bedroom, occupiers would have a very poor outlook from this habitable room. At second floor the use of frosted glass in the Velux windows serving the living room/kitchen/diner of Unit 2 would prevent any overlooking from the amenity terrace to unit 3.
10. The proposed courtyard and walkway would also raise privacy concerns in relation to windows looking onto the courtyard. Whilst frosted glass is now proposed to ensure privacy, this would significantly reduce outlook to those rooms. The proposed screening to the amenity areas of Unit 1 and Unit 2 to the rear would also reduce the outlook available to these windows.

11. Notwithstanding issues of privacy and daylight/sunlight, due to the close proximity of the main building and the rear addition, all rooms facing onto the courtyard would suffer from an overbearing sense of enclosure.
12. Policy DM4 requires 5m² of private amenity space for 1-2 dwellings and Units 1 and Unit 2 would meet this requirement, however, Unit 3 would fall marginally short of this requirement. Whilst the appellant does not consider that the proposed courtyard would contribute towards the formal open space requirement, it would, nevertheless, be a significantly enclosed and overshadowed space.
13. Although the density would be higher than that set out in Policy 3.4 and table 3.2 of the London Plan this in itself would not be a matter which would warrant refusal in its own right. Nonetheless, I consider that the significant concerns relating to living conditions are symptomatic of the high density of the proposed development.
14. Taking these factors in combination, I conclude that the proposal would provide a poor standard of accommodation overall for future occupiers in terms of outlook and amenity space. The proposal would, therefore, be contrary to Policy 7.6 of the London Plan 2016, Policies SP02 and SP10 of the Core Strategy 2010 and Policies DM24 and DM25 of the Managing Development DPD (MD DPD) (2013) which seek high quality design which protects amenity. Conflict also arises with Policy DM4 which requires all housing developments to provide private amenity space.

Neighbouring Occupiers

15. On the north facing side of the development there would be three windows which would look out onto the adjacent health centre to the rear of the site at a distance significantly less than the separation distance set out in Policy DM25 and the supporting text at paragraph 25.3. The appellant considers that the policy does not relate to non-residential properties, however, part 1 does state '*the amenity of surrounding existing and future residents and building occupants*' and I, therefore, consider that the policy applies.
16. I agree that there would be a mutual degree of overlooking between the health centre and the windows on the rear elevation of the proposal, in particular between Unit 2 and the health centre. The rooms in the health centre appear to be consulting rooms which would, therefore, be of a sensitive nature. Obscure glazing is proposed which would overcome this concern. However, as this would be the only window serving bedroom 1 the occupiers would have a poor outlook.
17. A 1.7m high boundary line fence or screening is proposed to the living room/kitchen/diner of Unit 1 in order to avoid overlooking to the health centre. A similar screen is proposed to the private amenity area of Unit 2. Whilst this would limit the actual degree of overlooking, I consider that there may still be a perception of overlooking. Furthermore, the screening would reduce the outlook available to these windows and amenity areas.
18. Concerns are also raised regarding the relationship of the private amenity terrace of unit 2 and a living room and bedroom window at first floor level to the east at 1 Pollard Row to the east which are less than 10m away from the development. However, a 1.7m high boundary fence/screen is proposed to the perimeter of the terrace. Given the proposed screening and the oblique angle, I do not consider that there would be a materially harmful degree of overlooking.

19. Whilst the use of obscure glazing and screening of the amenity areas would overcome potential privacy issues in relation to the health centre and 1 Pollard Row, I consider that this would reduce the outlook available from the respective windows/amenity areas. Consequently, I do not consider that this issue could be satisfactorily overcome without detriment to future occupants. Nevertheless, with the suggested condition to use obscure glass, the proposal would not have a harmful effect on the occupiers and users of the health centre and would not, therefore, be contrary to Policy 7.6 of the London Plan 2016, Policies SP02 and SP10 of the Core Strategy and Policies DM24 and DM25 of the Managing Development DPD (MD DPD) (2013).

Highway Safety

20. The appellant has provided a 106 agreement to secure a 'car-free' development which the Council agree would address reason for refusal 3. With the agreement, the proposal would not result in overspill parking onto adjoining streets and would not, therefore, cause harm to highway safety. As I have decided not to allow the appeal for other reasons, it has not been necessary to consider the detail of the 106 obligation.
21. Whilst the proposed cycle parking would meet the required standard the Council are concerned about the long term effectiveness of the proposed vertical cycle storage. However, I consider that this matter could have been addressed by way of a condition had I decided to allow the appeal.
22. For the reasons stated above, I conclude that the proposal would not cause harm to highway safety and would make adequate provision for cycle parking. The proposal would not, therefore, be contrary to Policy 6.13 of the London Plan, Policy DM22 of the MDD and criterion 4 of Policy SP09 of the Core Strategy which together seek to promote car free developments and minimise on-site and off-site parking provision in areas with good access to public transport and ensure that development meets the minimum cycle parking standards.

Other Matters

23. Attention has been drawn to a subsequent planning application¹ for a similar scheme on the appeal site recently approved by the Council. However, this proposal is for only two units with no basement accommodation and a smaller rear addition and would, therefore, be less harmful than the appeal proposal. It does not, therefore, justify the harm which I have identified.

Conclusion

24. The proposal would make a contribution, albeit limited, to housing supply and to the economy in the short term during the construction phase. However, I have concluded that the proposal would have a harmful effect on the living conditions of future occupiers and I consider that this significant harm would outweigh the benefits.
25. For the reasons stated and taking all other considerations into account the appeal should be dismissed.

Caroline Mulloy

Inspector

¹ Planning application reference PA/17/00416