

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: 2nd June 2017

Appeal Ref: APP/E5900/W/17/3167339

Harley House and Campion House, Frances Wharf, Burdett Road, London, Tower Hamlets E14 7EL

- 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 Chaim Cik, Frances Wharf LLP against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/15/03433, dated 8 December 2015, was refused by notice dated 29 November 2016.
 - The development proposed is roof extensions at 7th floor and 9th floor levels to provide 6 new residential units of class C3 along with reconfiguration of 1 existing unit.
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Decision

1. The appeal is allowed and planning permission is granted for roof extensions at 7th floor and 9th floor levels to provide 6 new residential units of class C3 along with reconfiguration of 1 existing unit at Harley House and Campion House, Frances Wharf, Burdett Road, London, Tower Hamlets E14 7EL in accordance with the terms of the application, Ref PA/15/03433, dated 8 December 2015, and the plans submitted with it, subject to the conditions in the Schedule attached to this Decision.

Application for costs

2. An application for costs was made by Mr Chaim Cik, Frances Wharf LLP against the Council of the London Borough of Tower Hamlets. This application is the subject of a separate Decision.

Procedural Matters

3. I have amended the address in the banner heading above to Harley House rather than Anchorage House as per the application form as I consider this to be a more accurate description of the location.

Main Issues

4. The main issues in this case are:
 - The effect of the proposal on the character and appearance of the area and the adjacent Limehouse Cut Conservation Area;
 - The effect of the proposal on the living conditions of existing occupiers with specific reference to sunlight, daylight and noise, disturbance, vibration and dust;
 - Whether the proposal would represent over-development of the site; and
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- Whether the proposal should make provision for affordable housing.

Reasons

Character and appearance

5. The appeal site, Frances Wharf comprises of Harley House and Campion House, a 5-10 storey stepped development which contains 101 residential units grouped around a private courtyard along with a convenience store on the ground floor. Harley House lies adjacent to the Limehouse Cut Conservation Area which is focussed on the canal and its immediate hinterland.
6. The Conservation Area Character Appraisal (CACA) defines the character of the Conservation Area as that of a broad canal and towpath, presently a tranquil, calm open space. It is comprised of those elements which are special to the canal and river environment including the brick lining of the canal, the towpath and key buildings and revetment walls adjoining the waterways.
7. The existing building is part 5-10 storeys in height and steps up in height with the upper portions set back from the lower floors. The proposed extensions involve the extension of the 7th floor level in the north west corner of the building (above Campion House) and the erection of a 9th floor level above the southern portion of the building (Harley House) in order to deliver an additional 6 residential units along with the reconfiguration of an existing residential unit. It is also proposed to extend the existing stair and lift cores by a further level.
8. The area is characterised by a mix of building heights and designs. However, there are a number of taller buildings which exist or are approved to both the site's north and south sides including an 11 storey building, Argyll Point which sits to the north of the site. Permission also exists for an 11 storey building to the south side of Limehouse Cut which was under construction at the time of my site visit. Consequently, I consider that the height of the proposal would be compatible with the surrounding buildings.
9. The existing building has a stepped structure with a double storey base, 5-7 storey 'middle' and a single storey top clearly expressed through the use of materials. In light of the existing structure the proposed double storey top would remain proportionate to the existing building.
10. Furthermore, as the proposed development seeks to extend the building at both 7th and 9th floor levels the original 'stepped' form of the existing building would be retained, albeit with a further 2.75m in height. Moreover, the materials, design details and fenestration pattern would reflect that of the existing building. The proposal would not, therefore, upset the architectural rhythm of the existing building or appear 'top heavy'. Taking these factors in combination, I consider that the proposal would be compatible with the host property and surrounding area.
11. The Council consider that the proposal would have a harmful effect on the nearby Limehouse Cut Conservation Area. The additional storey raises the building by only 2.75m at ninth floor level on a building which is over 30m high and would be set back from the main south elevation. Due to the small increase in height and set back of the proposal it would not interfere with long views of the canal from the surrounding area or result in a material increase in enclosure or reduce openness. Furthermore, the building under construction on the opposite side of the canal would be 11 storeys. Consequently, I consider that the proposal would not have a harmful effect on the character or appearance of the Conservation Area.

12. The Sail Loft, diagonally opposite the appeal building, across the canal is one of the surviving Victorian warehouses and is locally listed. As there would only be a small increase in height and in light of the 11 storey building under construction which sits immediately adjacent, I do not consider that the proposal would have a harmful effect on the locally listed building.
13. For the reasons stated, I consider that the proposal would not have a harmful effect on the character or appearance of the area. Furthermore, I consider that the proposal would preserve the character and appearance of the Conservation Area in accordance with the expectations of the Act¹. The proposal would not, therefore, be contrary to Policy SP10 of the Council's Core Strategy (2010) and Policy DM27 of the Council's Managing Development Document (MDD) (2013) which seek to protect and enhance Conservation Areas and locally listed buildings. Furthermore, no conflict would arise with Policy DM24 of the MDD which seeks high quality design. Neither would conflict arise with paragraphs 17 and 56 of the National Planning Policy Framework (the Framework) which seek to secure high quality design which contributes positively to making places better for people.

Living conditions of existing occupiers

14. The Council and residents are concerned that the proposal would reduce daylight and sunlight to existing properties. A daylight and sunlight assessment has been undertaken which outlines the potential effects of the proposal on existing and future residents. All habitable rooms which face onto the courtyard have been tested and together with a number of windows on the adjacent Argyle Court development and affected windows on the Burdett Road facing elevation of the building.
15. Out of the 98 windows tested, only 2 windows at 6th floor level would experience reductions in daylight reductions which are greater than the recommended levels suggested by BRE and would do so as a result of a new balcony which would be placed above them. However, I note that residual daylight levels will still remain above the minimum recommended levels contained in the BRE guidance. The assessment also confirms that the visible sky component would remain above the minimum recommended levels in the BRE Guidance. The balconies above those windows have been reduced in size and width to minimize disruption to the existing windows below the balconies.
16. The assessment did not originally address the impact on a residential unit located in the north east corner of Harley House at 7th floor level. The consultants who undertook the assessment highlight that the unit is dual aspect and that an assessment of the window on the north-east elevation concluded that the interior of the unit would achieve levels of daylight that would be in accordance with the BRE guidance. They consider that the windows on the north-west elevation would have access to daylight from the north-west over the top of the single-storey proposed development, as well as from the north east where the windows have an unobstructed view of the sky.
17. They also consider that the proposal would not reduce the vertical sky component of the windows on the north-west elevation to levels below those considered adequate by the BRE guidelines. As the windows to the unit are orientated within 90° due north, they do not require an assessment of Annual Probable Sunlight Hours. On the basis of the evidence before me, I consider that existing occupiers of this unit would receive adequate daylight and sunlight.

¹ Planning (Listed Buildings and Conservation Areas) Act 1990

18. In terms of outlook, the windows of the same unit would face out onto the existing private terrace and also the reduced communal terrace and consequently, I consider that the unit would retain a reasonable level of outlook. The proposed unit would also still retain a good level of privacy, as the large private external amenity space and the associated planting around it will prevent others from being able to look directly into the unit itself. Furthermore, I have imposed a condition to ensure that the glazing to the proposed hallway is obscured so users of this route do not look directly into the adjacent private amenity space.
19. Concerns are raised by the occupier of the northern most corner unit of 6th floor regarding loss of sunlight, privacy and security. However, the patio faces east and is, therefore; likely to only receive full sunlight in the morning at present. Consequently, I do not consider that the proposed extension would have a materially harmful effect on sunlight. There would only be one window in the elevation of the extension which would serve a bedroom and thus the potential for overlooking would be limited. There may be potential for overlooking from the proposed communal terrace on floor eight, however, the degree of overlooking would be similar to that which exists between other terraces and balconies in the development. The 6th floor balcony currently sits below and is potentially accessible from the 7th floor terrace and consequently, the extension of the 7th floor is likely to improve security.
20. The proposed 9th floor would sit above Flat 803 which has a private balcony. There may be some potential for overlooking from the 9th floor windows to the balcony; however, the degree of overlooking would be similar to that experienced by the 7th floor terrace from the terrace of Flat 803 and elsewhere on the development. Given the existing relationship between properties, I do not consider that the proposal would result in a materially harmful degree of overlooking to Flat 803. As the terrace and windows face in a northerly direction the proposal would not result in a material reduction in daylight/sunlight. In addition, the proposed additional communal amenity space is separated from the nearby existing units by 9m to ensure that existing residents still retain an acceptable level of privacy. As there is an existing communal terrace and private terraces on the 7th floor, I do not consider that there would be a material change in security risk arising from the proposal.
21. Residents of Unit 801 are concerned that the proposed 9th floor balcony would result in loss of light and overshadowing to their bedroom window. However, the window below the balcony proposed on the east elevation is not enclosed by the courtyard and given its elevated position views are not hampered by existing buildings. The window faces east and would, therefore, receive direct sunlight until around midday. Thereafter, sunlight to the window would be obscured by the existing building in any event. There are no detailed floor plans of the existing layout of floor 8 and it is not, therefore, clear how far Unit 801 extends. However, if the unit extends along the south elevation, due to the elevated position and orientation of the window below the proposed balcony on this elevation, I do not consider that the proposal would have a materially harmful effect on sunlight or daylight.
22. Concerns are also raised by residents regarding the impact of the construction activity in terms of noise, vibration and dust pollution and also the lift being out of action on the living conditions of existing residents. A number of measures are proposed during the construction process to minimise disruption to existing residents including: locating equipment, site offices and worksites away from neighbouring properties where reasonable practical; ensuring that standard construction working hours are not exceeded; the use of site hoardings or portable acoustic enclosures/screens; and the use of quieter alternative methods of

construction where reasonably practical. These measures can be outlined in a robust construction management plan and secured by condition. The appellant has confirmed that the majority of the works to the existing lift core can be undertaken whilst the existing lift is still operating on the floors below and a further condition regarding the lift can be attached to any permission to ensure minimum disruption.

23. Whilst I do not underestimate resident's concerns and although there will be a change in the living environment in the short term during the construction phase, with the suggested condition and measures I do not consider that these changes would be unacceptable to the living conditions of existing occupiers.
24. Reference is made to an appeal decision² in which the inspector considered that material weight can and should be given to the implications of construction activity on existing residents in confined sites such as this and that adherence to a construction management plan may not be sufficient to mitigate against the impacts of construction activity on existing residents in some instances. However, I am not aware of the specific circumstances of this case which does not in any event appear to be directly comparable to the appeal proposal. This limits the weight which I can attach to it in my Decision.
25. Submissions were made in relation to the residents human rights, with specific reference to Article 1 of the First Protocol of the Human Rights Act 1998 (the Act) which concerns enjoyment and deprivation of possessions. In addition, Article 8 states that everyone has a right to respect for his home and private life, his home and correspondence. These are qualified rights, whereby interference may be justified in the public interest.
26. A resident at No 801 considers that allowing the appeal would breach the aforementioned provisions due to the disruption caused during construction works and that the two flats to be erected on the 9th floor would interfere with the use and peaceful enjoyment of their home. However, I have concluded that with the suggested conditions, the construction works would not result in unacceptable changes to the living conditions of existing occupiers. I have also concluded that the proposed 9th floor would not have a materially harmful effect on the sunlight or daylight enjoyed to this property. Consequently, I do not consider that the proposal would interfere with resident's rights under Article 1 or Article 8 of the Act.
27. Taking the above factors in combination, I conclude that with the suggested conditions, the proposal would not have a materially harmful effect on the living conditions of existing occupiers. The proposal would not, therefore, conflict with Policy SP10 of the Core Strategy, Policy DM25 of the MDD or paragraph 17 of the Framework which when taken together seek to protect the amenity of existing and future occupiers.

Density

28. Policy 3.4 of the London Plan 2016 states that development should optimise housing output for different types of location within the relevant density ranges shown in Table 3.2. The appeal site is in an 'urban location' and within a Public Transport Accessibility Level (PTAL) of 4 (good). On the basis of Table 3.2 the density should be approximately 260 units per hectare and up to 700 habitable rooms per hectare. The existing development is already above the density range standing at 459 units per hectare and 1327 habitable rooms per hectare. The proposed development would increase the density to 486 units per hectare and 1400 habitable rooms per hectare.

² Appeal reference: APP/E5900/A/12/2184297

29. The supporting text clarifies that it is not appropriate to apply the density ranges in Table 3.2 mechanistically. Density ranges are broad enabling account to be taken of other factors including local context, design and transport capacity and social infrastructure. Paragraph 1.3.51 of the Housing SPG states that in appropriate circumstances it may be acceptable for a particular scheme to exceed the ranges in the density matrix providing important qualitative concerns are suitably addressed. The Council consider that the qualitative concerns have not been suitably addressed, particularly with regards to bullet points 1, 3 and 4 in relation to design and amenity.
30. The proposal is situated within a PTAL rating area of 4 (good) and I have concluded that the proposal would not harm the character or appearance of the host building, the Conservation Area or wider area. Furthermore, there is no evidence to suggest that the proposal would put undue pressure on social infrastructure, amenities or services. I have also concluded that the proposal would not harm the living conditions of existing occupiers. Thus, I consider that the proposal satisfies bullet points 1, 2, 3 and 4. The Council does not raise concerns with regards to the other criteria.
31. Whilst the resultant proposal would exceed the densities set out in the London Plan and Housing SPG, there would only be a marginal increase in density when compared to the existing development. Furthermore, the proposal suitably addresses the considerations in paragraph 1.3.51 of the Housing SPG and I, therefore, consider that an increase in density can be supported in the specific circumstances of this case.

Affordable Housing

32. Policy SP02 of the Core Strategy seeks to ensure that new housing assists in the creation of sustainable places by optimising the use of land and delivers the maximum reasonable amount of affordable housing. Policy DM3 of the MDD seeks to ensure that development maximises affordable housing and provides a balance of housing types. Criterion 4b of Policy DM3 states that affordable housing will be calculated based on the total housing existing or permitted as part of a development, where a scheme proposed additional housing. The supporting text at paragraph 3.8 goes on to state that *"where a housing development has been permitted and the permission is subsequently amended (e.g. by means of a variation of the extant planning permission or a new planning application) to the extent that the development would provide 10 new units or more, affordable housing policies will be applied to the whole development and not restricted to the additional number of dwellings in the amended or new proposal"*.
33. The original planning permission³ provided 35% affordable housing by way of a section 106 agreement. The Council considers that as the proposed development involves the creation of additional residential units which are physically and functionally linked to an existing development which consists of more than 10 residential units that the appeal proposal should provide a policy compliant level of affordable housing.
34. The wording of Criterion 4b of Policy DM3 and the supporting text is not entirely clear and thus open to interpretation. However, the proposal does not seek to amend an extant planning permission. Furthermore, whilst the proposal would result in the creation of new floor space the existing development is complete and occupied and has been for some time. The proposal cannot, therefore, be

³ Planning application reference PA/05/01337

considered to be incremental development and should be treated as a standalone application. Consequently, as the proposal is below the 10 unit threshold, the affordable housing requirement does not apply.

35. Nonetheless, the appellant proposes 3 x 1 bed intermediate units which equates to 35% of the proposed development by habitable rooms. Whilst this does not comply with the 70% social/affordable rent and 30% intermediate affordable housing split required by Policy DM3 affordable housing is, nevertheless, proposed despite the absence of a requirement to do so. It is proposed to secure this by way of a unilateral undertaking, although, such an agreement is not before me. As I have concluded that affordable housing is not required in order to make the development acceptable, the absence of a unilateral undertaking does not weigh against the development.
36. For the reasons stated, the proposal would not be required to make provision for affordable housing and would not, therefore, be contrary to Policy SP02 of the Core Strategy and Policy DM3 of the MDD.

Other matters

37. Concerns have been raised by residents that the proposal would exacerbate parking problems and congestion on surrounding streets. However, I have attached a condition requiring the applicant enters into an agreement to prevent future occupiers of the proposed development obtaining parking permits thus securing the development as car free which will address this matter.
38. Concerns have also been raised regarding the capacity of the refuse store. However, it has been demonstrated that there is room in the existing store to accommodate further bins. In order to cater for the proposed 6 additional residential units and help alleviate the issue of overflowing bins it is proposed to install 2 x 1100 litre refuse bins and 1 x 660 litre recycling container within the existing bin store. This would actually exceed the waste capacity guidelines for the proposed six units. A condition requiring the installation of those bins prior to the occupation of the units has been imposed. The proposal would, therefore, make sufficient provision for refuse and recycling.
39. Concerns have been raised that the amenity space for two of the proposed units on the 9th floor would not meet the standards set out in the London Plan. On the basis of my calculations both units would meet the standard. However, even if they were deemed not to meet the standard, the shortfall in provision would be so small as to not be materially harmful to the living conditions of future occupiers.

Conditions

40. In addition to the standard time limit condition (1) I have imposed a condition specifying the relevant drawings as this provides certainty (2). A condition (3) requiring the submission of samples of the external facing materials, soft and hard landscaping, details of obscured glazing and details of the communal amenity space and child play provision is necessary in the interests of character and appearance and to ensure appropriate provision of amenity space.
41. Conditions relating to a Construction Environmental Management Plan (4), a programme of works for the proposed lift works (6) and that all external glazing to be used within the proposed development shall meet the recommendations in the noise exposure assessment (10) are necessary to protect the living conditions of existing occupiers of surrounding residential properties during the construction phase and also future occupiers.

42. Condition 5 is required to ensure that the proposed development does not have an adverse impact on the Blue Ribbon network in accordance with Policy SP04 (4) of the Core Strategy and DM12 of the MDD.
43. A condition (7) requiring that full details of the proposed PV array are submitted to and approved in writing by the Local Planning Authority and that the development delivers CO2 emission reductions in accordance with the approved energy statement is required to ensure the highest levels of sustainable design and construction in accordance with Policy 5.3 of the London Plan, Policy SP11 of the Core Strategy and Policy DM29 of the MDD.
44. A condition (8) is required to ensure that the applicant enters into an agreement to prevent future occupiers of the proposed development obtaining parking permits thus securing the development as car free in order to ensure that the development does not exacerbate the existing strain on car parking spaces in the surrounding area which was evident at the time of my site visit nor adversely impact on traffic congestion in the locality.
45. A condition (9) requiring details of proposed cycle parking is required to promote sustainable transport and reduce the pressure for on-street parking. Condition 11 is required to ensure provision for refuse and recycling.

Conclusion

46. For the reasons stated and taking all other considerations into account, the appeal should be allowed subject to the conditions in the attached schedule.

Caroline Mulloy

Inspector

Schedule

Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3389.6.0S (block plan and location plan); 3389 S1; 3389 S2; 3389 S3; 3389 S4; 3389 S5; 3389 S6; 3389 S7; 3389 S8; 3389 S9; 3389 S10; 3389 S11; 3389 S12; 3389 P10 rev A; 3389 P20 rev A; 3389 P30 rev B; 3389 P40 rev B; 3389 P50 rev B; 3389 P60 rev B; 3389 P70 rev A; 3389 P80 rev B; 3389 P90 rev B; 3389 P100; 3389 P110 rev B; 3389 P120 rev B; 3389 P130 rev A.
- 3) Full details and samples of the following parts of the development shall be submitted to and approved in writing by the local planning authority prior to commencement of the works:
 - a) All external facing materials;
 - b) Soft and hard landscaping, including details of the communal amenity space and associated child play provision;
 - c) Details of obscured glazing to the 7th floor communal hallway

The relevant works shall be carried out in accordance with the approved details and samples.

- 4) No development shall be commenced on site unless and until a Construction Environmental Management Plan is submitted to the Local Planning Authority (in consultation with TfL) and approved in writing prior to the implementation of the development. The Construction Environmental Management Plan shall include specific details relating to the demolition, construction, logistics and management of all works associated with the development and include:
 - a) Details of the site manager, including contact details (phone, email, postal address);
 - b) The location of a large notice board on the site that clearly identifies the name and contact details of the site manager and a 'Considerate Constructors' contact telephone number;
 - c) Any means, such as a restriction on the size of construction vehicles and machinery accessing the site, required to ensure that no damage occurs adjacent streets throughout the construction period;
 - d) Any means of protection of services such as pipes and water mains within the road;
 - e) Measures to be adopted to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage and unloading of building materials and similar construction activities;
 - f) Measures to be adopted to ensure that pedestrian access past the site on the existing public footpaths is safe and not obstructed during construction works;
 - g) Ingress and egress to and from the site for vehicles during site works period;
 - h) Proposed number of timing of truck movements throughout the day and the proposed routes;
 - i) Procedures for controlling sediment runoff, dust and the removal of soil, debris and demolition and construction materials from public roads or places;

- j) Building, engineering and other operations to be carried out only between the hours of 0800 and 1800 Mondays to Fridays, 0800 to 1300 Saturdays and shall not be carried out at any time on Sundays or Public Holidays;
- k) Location of vehicles and construction machinery accesses during the period of site works;
- l) Details of the mitigation measures for dust and emissions as well as methodology for monitoring during construction;
- m) Details of the effects of construction traffic on air pollution;
- n) Details of swept paths for construction vehicles accessing/exiting the site.
- o) Measures put in place ensuring adequate access routes are retained for existing residents.

The construction of the proposed development shall be operated strictly in accordance with the details so approved.

- 5) Prior to the commencement of development hereby approved, a Risk Assessment and Method Statement outlining all works to be carried out adjacent to the water must be submitted and approved in writing by the local planning authority in consultation with the Canal & River Trust. The works shall be carried out in accordance with the method statement.
- 6) Prior to the commencement of development hereby approved, a full programme of works for the proposed lift works which includes details of any mitigation measures for existing residents shall be submitted and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) Prior to the commencement of development hereby approved, full details of the proposed PV array (as illustrated on drawing 3389.P.60 Rev B) shall be submitted and approved in writing by the local planning authority. The development hereby approved shall deliver CO2 emission reductions in accordance with the approved energy statement (Ref. V2.0, Dated 15/07/2015). The development shall be carried out in accordance with the approved details.
- 8) No development shall take place until arrangements shall have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have been approved in writing by the local planning authority. The approved scheme or agreement shall ensure that:
 - i) no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and
 - ii) any occupiers of the approved development shall surrender any such permit wrongly issued or held.

The restrictions and requirements of the scheme shall apply to and be communicated to all future occupiers of the development including successors in title as well as any person occupying the premises as a tenant or licensee.

Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby permitted continues.

- 9) The proposed cycle parking hereby approved on plan 3389.P.10 Rev A shall be implemented prior to first occupation of the proposed residential units and retained for its permitted use for the lifetime of the development.

- 10) All external glazing to be used within the proposed development shall meet with the recommendations contained within the approved noise exposure assessment (Ref. 10865-NEA-01, Dated 29/02/2016).
- 11) Prior to occupation of the development, the proposed additional refuse/recycling storage at ground floor level hereby approved on plan 3389.P.20 Rev A shall be implemented and available for the respective occupiers. Such provision shall be maintained for the life time of the development.